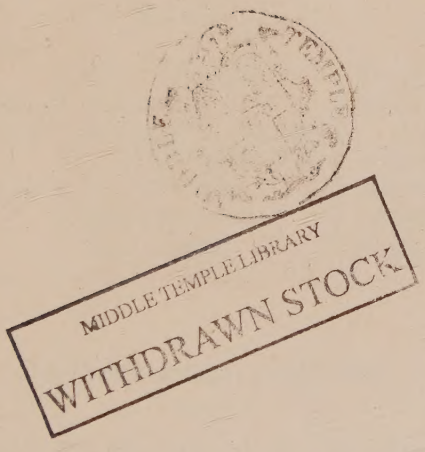
Middle Temple
Library


MIDDLE TEMPLE LIBRARY
WITHDRAWN STOCK

DAVIDSON'S
CONCISE PRECEDENTS
IN
CONVEYANCING

WITH
PRACTICAL NOTES

ARRANGED UNDER THE FOLLOWING HEADINGS:

PART I.

ABSTRACTS.
ACKNOWLEDGMENTS, &c. (PRODUCTION OF DEEDS).
APPOINTMENTS OF TRUSTEES.
ASSENTS.
BILLS OF SALE.
CONSENTS.
CONTRACTS AND CONDITIONS OF SALE.
CONVEYANCES.
DECLARATIONS.
DISCLAIMER.
DISENTAILING DEEDS.
ENLARGEMENT OF LONG TERMS.
EXCHANGES.
INDEMNITY DEEDS.
LEASES.
MORTGAGES.

TWENTY-FIRST EDITION

BY

ARTHUR TURNOUR MURRAY
of Lincoln's Inn, Barrister-at-Law

LONDON:
SWEET AND MAXWELL, LIMITED,
2 & 3 CHANCERY LANE, W.C.2.
1926
(Printed in England.)

PRINTED IN GREAT BRITAIN BY
THE EASTERN PRESS, LTD., READING

PREFACE

TO THE TWENTY-FIRST EDITION.

The greater part of this work has been re-written, while of the subject-headings under which this edition is arranged (see Title Page) the headings "Abstracts," "Assents" and "Parcels" are new.

Under Abstracts the distinction drawn between legal estates and equitable interests is discussed. This distinction may be called the key to the new scheme so far as regards the law of land, and especially of settled land. The principal sections of the Acts which deal with this distinction are set out in full (in preference to a mere summary), while the statutory specimens of Abstracts should be of help not only to the vendor's solicitor, but also to the conveyancing draftsman generally, towards understanding the relation in which instruments dealing with legal estates stands to those dealing with equitable interests.

The "General Remarks" are intended to explain the principles of the new law which govern the subject-headings which they precede, so far as they affect the preparation of legal instruments. The attention of the reader is drawn to the Table of Contents, in which will be found a full synopsis of the points of law discussed in these Remarks, as well as the usual list of Precedents.

Many of the Precedents are necessarily quite new, and, although uniformity of practice is desirable, it is not unlikely that there will be found to be some divergence in the modes of expression adopted. Moreover, apart from mere verbiage, there may be differences of view as to the correct way of carrying out a particular transaction. For some time, therefore, the conveyancing draftsman will be feeling his way towards the best mode of dealing with property (especially

land) and the simplest language in which legal instruments may be expressed.

It would be out of place here to discuss either the new law at large, or the policy underlying the changes in the law of land, or the relations which these changes bear to the system of Registration of Title, although it is to be deplored that there are still two different systems of dealing with the same transactions, namely the official system under the Land Registry and what may be called unofficial conveyancing.

The object of this edition, however, is to help the draftsman generally by pointing out the principal changes in the law, and by giving practical examples of what is thought to be the way in which they should be carried into effect.

The Editor trusts that, in spite of defects, his object may in some degree have been attained, and takes this opportunity of thanking all those who have helped him in an unusually difficult task.

A. TURNOUR MURRAY.

Lincoln's Inn.

ABBREVIATIONS

OF

SOME SHORT TITLES OF STATUTES CITED.

A. E.	Administration of Estates.
B. S.	Bills of Sale.
C.	Conveyancing.
F. & R.	Fines and Recoveries.
J.	Judicature.
L. C.	Land Charges.
L. P.	Law of Property.
L. R.	Land Registration.
L. T.	Land Transfer.
M. W. P.	Married Women's Property.
P. H.	Public Health.
P. T.	Public Trustee.
R. P.	Real Property.
S. L.	Settled Land.
T.	Trustee.
V. & P.	Vendor and Purchaser.

TABLE OF CONTENTS.

ABSTRACTS.

GENERAL REMARKS.

Right of purchaser to an abstract, 1—Sale in lots, 1—Registered land, 1—Right to see documents prior to title, 1—Supplemental instruments, 2—Contents of abstract, 2—Title to be shown to legal estates, 2—L. P. Act, 1925, sect. 10, sub-sect. (1), 2—Meaning of "legal estates," 2—L. P. Act, 1925, sect. 1...3—Meaning of "estate owner," 4—Legal powers, 4—Equitable interests, 4—Equitable powers, 4—Legal estate overreaching what interests and powers, 4—L. P. Act, 1925, sect. 2...4—Land charges and notice, 6—Protection of vendor's solicitor, 6—L. P. Act, 1925, sect. 10, sub-sect. (2), 6—Fraudulent concealment of documents and falsification of pedigrees, 7—L. P. Act, 1925, sect. 183...7—Delivery of abstract, 7—Requisitions on title, 7—Verification of abstract, 8—Searches for land charges, &c., 8—Statutory examples of abstracts, 8.

PRECEDENTS.

		PAGE
I.	STATUTORY SPECIMEN No. I.	9
II.	STATUTORY SPECIMEN No. II.	11
III.	STATUTORY SPECIMEN No. III.	13
IV.	STATUTORY SPECIMEN No. IV.	15
V.	STATUTORY SPECIMEN No. V.	16

ACKNOWLEDGMENTS (PRODUCTION OF DEEDS).

GENERAL REMARKS.

Right of purchaser to documents of title, 18—Production and safe custody of documents, 18—L. P. Act, 1925, sect. 64...18—Right to take copies, 20—Documents retained by third parties, 20—L. P. Act, 1925, sect. 96...21—Trustees and mortgagees give acknowledgment only, 22—Purchaser when entitled to both acknowledgment and undertaking, 22—Whether tenant for life should give undertaking, 22—Cost of acknowledgment, &c., 22—Stamp duty on acknowledgment, &c., 23.

PRECEDENTS.

PAGE

I. ACKNOWLEDGMENT and UNDERTAKING as to Production and Custody of Deeds in a Conveyance on Sale 23

II. ACKNOWLEDGMENT and UNDERTAKING as a Separate Document 23

III. AGREEMENT for the DEPOSIT of DEEDS relating to Two Estates Mortgaged to DIFFERENT Mortgagees 24

IV. COVENANT for PRODUCTION of DEEDS by TRUSTEES or MORTGAGEES 25

V. COVENANT for PRODUCTION of DEEDS by a MORTGAGOR where the Mortgagee retains them ... 27

APPOINTMENTS OF TRUSTEES.

GENERAL REMARKS.

Appointment of new trustees generally, 28—Devolution of powers or trusts, 28—Personal representatives may act until appointment, 28—And appoint trustees of infant's property, 28—Power to appoint new or additional trustees, 28—T. Act, 1925, sect. 36...28—Removal of trustee, 30—Corporation as trustee, 30—Power of executors to appoint, 30—Supplemental provisions as to appointments of trustees, 31—T. Act, 1925, sect. 37...31—Retirement of trustee without a new appointment, 32—T. Act, 1925, sect. 39...32—Vesting of trust property on new appointment, 33—T. Act, 1925, sect. 40...33—Stamp duty, 33—Implied vesting, 33—Special provisions where trusts connected with land, 35—Number of trustees of settled land or of land settled on trust for sale, 35—T. Act, 1925, sect. 34...35—Mode of effecting appointment where land is settled on trust for sale or is settled land, 36—T. Act, 1925, sect. 35...36—Procedure on appointment of new trustees of settled land, 36—S. L. Act, 1925, sect. 35...36—Evidence as to appointor or trustee being unable or unwilling to act, 37—Evidence as to a vacancy in any trust, 37—T. Act, 1925, sect. 38...37—Charitable trusts, 38—Infant not to be a trustee, 38—Infant not to be a personal representative, 38—Effect of conveyance of legal estate to infant upon trust, 38—L. P. Act, 1925, sect. 19, sub-sects. (4) (5), 38.

PRECEDENTS.

PAGE

I. APPOINTMENT (by Indorsement) by HUSBAND AND WIFE of NEW TRUSTEES of a MARRIAGE SETTLEMENT of a Sum of STOCK 39

II. APPOINTMENT (by SUPPLEMENTAL DEED) by HUSBAND AND WIFE of a NEW TRUSTEE in place of a deceased Trustee, where there have been CHANGES of INVESTMENT 40

PAGE

III. APPOINTMENT by Surviving Trustees of a New Trustee of a Will of Real and Personal Estate 42

IV. APPOINTMENT by Widow of a New Trustee of a Will of Real and Personal Estate in place of a Trustee who has been abroad for over a year. Declaration for Vesting the Trust Estate 43

V. APPOINTMENT by Continuing Trustee and a Retiring Trustee who desires to be discharged but is willing to act in the Appointment ... 45

VI. APPOINTMENT by New Trustee of a Vesting Deed for the purposes of the Settled Land Act, 1925 46

VII. APPOINTMENT (by Supplemental Deed) of a New Trustee of a Term of Years created by a Settlement of Land 47

VIII. DEED Poll Supplemental to Conveyance of Land on Trust for Sale, effecting the Retirement of a Trustee who desires to be discharged 48

ASSENTS.

GENERAL REMARKS.

Assents made after 1925...50—A. E. Act, 1925, sect. 36... 50—Meaning of "real estate," 51—Relation back to death, 51—Covenant against incumbrances, 51—Assent vesting legal estate to be in writing, 52—Notice of assent to be endorsed on probate, 52—Evidence of assent on conveyance to purchaser, 52—Assent subject to indemnity or security, 52—Stamp duty, 52—To what assents section applies, 53—Power to give possession before assent, 53—Assent by one of several executors, 53—Methods of vesting legal estate, 53—Statutory forms, 53—Vesting assent in case of settled land, 53—Registered land, 54.

PRECEDENTS.

PAGE

I. ASSENT by Executors to Specific Devisee of Freeholds entitled in fee simple free from incumbrances 54

II. ASSENT by Executors to Vesting of Freeholds in themselves [or others] as Trustees for Sale 55

III. CONVEYANCE of Freeholds by Personal Representatives to Devisee 55

IV. ASSENT by Executors to Specific Bequest of Leaseholds 56

V. ASSIGNMENT by Executors to Specific Legatee of Leaseholds 57

VI. STATUTORY Form of Assent by Personal Representative in Favour of a Person Absolutely Entitled free from Incumbrances 58

PAGE

VII. STATUTORY FORM of ASSENT by PERSONAL REPRESENTATIVES in Favour of TRUSTEES for SALE 58

VIII. STATUTORY FORM of VESTING ASSENT by PERSONAL REPRESENTATIVES 59

BILLS OF SALE.

GENERAL REMARKS.

Bills of sale generally, 61—Pledge, 61—Carrier's lien, 61—Hire-purchase agreements, 61—Ordinary course of business, 61—Debentures, 61—Settlements, 61—Husband and wife, 61—Agreement for lien on chattels, 62—Powers of distress, 62—Attornment clause in mortgage, 62—Bills of sale by partners, 62—Transfer of bill of sale, 62—The statutory form, 62—Description of grantor and grantee, 63—Statement of the consideration, 64—Covenants for title, 66—Parcels, 66—Meaning of "true owner," 67—of "specific description," 67—After-acquired chattels, 68—Meaning of "trade machinery," 68—Amount secured, 68—Interest to be rateable, 69—Power of sale, 70—Excessive powers, 71—Causes of seizure, 71—Additions to statutory form, 72—Provisions held not to invalidate bill of sale, 73—Provisions held to invalidate bill of sale, 74—Attestation and registration, 74—Local registration, 75—Priorities, 75—Execution by attorney, 76.

PRECEDENTS.

PAGE

I. STATUTORY FORM of BILL OF SALE 76

II. BILL OF SALE varying STATUTORY FORM 77

CONSENTS.

GENERAL REMARKS.

Exercise of powers subject to consent, 79—Power of advancement, 79—Consent of protector, 79—Change of investment, 79—Statutory powers remain in tenant for life, notwithstanding assignment for life interest, 79—S. L. Act, 1925, sect. 104...80.

PRECEDENTS.

PAGE

I. GENERAL CONSENT by MORTGAGEES of LIFE INTEREST under a Settlement of Land to Exercise of Statutory Powers by ESTATE OWNER 82

II. MEMORANDUM of SPECIAL CONSENT by MORTGAGEES of LIFE INTEREST to Sale by ESTATE OWNER of a Specified Part of SETTLED LAND ... 83

III. CONSENT by HUSBAND AND WIFE to Change of INVESTMENT under their MARRIAGE SETTLEMENT ... 84

IV. REQUEST by HUSBAND AND WIFE to TRUSTEES of PERSONALTY SETTLEMENT to PURCHASE a RESIDENCE 84

CONTRACTS AND CONDITIONS OF SALE.

GENERAL REMARKS.

Statute of Frauds, 85—L. P. Act, 1925, sect. 40...85—Conditions implied or forbidden by law, 85—Agreement to buy land "subject to formal contract," 85—Implied stipulations, 86—L. P. Act, 1925, sect. 44...86—Thirty years substituted for forty years as root of title, 86—Title to reversion to freeholds or leaseholds, 86—Title to enfranchised copyholds, 86—Enfranchisement of copyholds, 87—Subject to incidents until extinguishment, 87—What manorial incidents are saved, 87—Causes of forfeiture, 87—Extinguishment of manorial incidents, 88—Compensation agreement, 88—Constructive notice as to matters prior to the title, 88—Restrictions on the user of land, 88—Contract for lease not part of leasehold title, 89—Section how far applicable, 89—Other implied stipulations, 89—L. P. Act, 1925, sect. 45...89—As to prior title, 89—Plan or prior deed, 90—Validity of lease, 90—Of sub-lease and head lease, 90—Expenses borne by purchaser, 91—Sale in lots, 92—Recitals, &c., when evidence, 92—Equitable right to production of documents, 92—Expense of acknowledgments for production, 92—Documents retained by vendor, 92—Insurance against damage to property, 93—L. P. Act, 1925, sect. 47...93—Stipulations restricting purchaser from employing his own solicitor, 94—L. P. Act, 1925, sect. 48...94—Stipulations affecting title, how far void, 95—L. P. Act, 1925, sect. 42...95—Concurrence of equitable owners, 95—Costs of getting in legal estate, 95—Mortgage terms, equitable and entailed interests, 95—Undivided shares, 96—Purchase under compulsory powers, 96—Right of vendor to rescind, 96—L. P. Act, 1925, sect. 43...96—Cancellation of registered land charge, 96—Stipulations not of the essence of the contract, 96—L. P. Act, 1925, sect. 41...97—Stipulations implied in contracts for sale of registered land, 97—L. P. Act, 1925, sect. 110...97—Protection of solicitors adopting Act, 198—L. P. Act, 1925, sect. 182...98—Statutory forms of conditions in contracts by correspondence and other contracts for sale of land, 99—L. P. Act, 1925, s. 46...99.

PRECEDENTS.

PAGE

I. STATUTORY FORM of CONDITIONS OF SALE, 1925 100

II. CONTRACT for the SALE of FREEHOLDS without special CONDITIONS 103

III. CONTRACT for the SALE of FREEHOLDS and LEASEHOLDS, incorporating the Statutory Form or other General CONDITIONS 105

IV. CONTRACT for the SALE of FREEHOLDS or LEASEHOLDS with General Conditions similar to those used on a Sale by Auction 106

V. CONDITIONS of SALE by AUCTION of FREEHOLDS. VARIATIONS for a Sale in LOTS 108

PAGE

VI. SPECIAL Conditions on Sales by Private Treaty or by Auction (*with List of Special Conditions*) 113

VII. STATUTORY Form of Compensation Agreement 125

VIII. STATUTORY Form of Receipt for Rents, &c., and Gross Sum to be Endorsed on the Compensation Agreement 127

CONVEYANCES.

GENERAL REMARKS.

Alterations in form of conveyances, 128—Omission of "to the use of," 128—Use of the word "indenture," 128—L. P. Act, 1925, sect. 57...128—Deed poll, 129—Supplemental instruments, 129—L. P. Act, 1925, sect. 58...129—Construction of "month," "person," &c., 129—Conveyance to self alone, &c., 129—Execution of deed by individual, 130—Conditions and covenants, when not implied, 130—L. P. Act, 1925, sect. 59... 130—Covenants implied by certain statutory expressions, 130—L. P. Act, 1925, sect. 76...130—(A) In conveyance "as beneficial owner," 130—Second Schedule, Part I., 130—Right to convey, 130—Quiet enjoyment, 131—Free from incumbrances, 131—Further assurance, 131—Marriage settlements not included, 131—(B) Further covenant in conveyance of leasehold "as beneficial owner," 131—Second Schedule, Part II., 131—Validity of lease, 131—Marriage settlements not included, 132—(C) In mortgage or charge "as beneficial owner," 132—Second Schedule, Part III., 132—Right to convey, 132—Quiet enjoyment, 132—Free from incumbrances, 132—Further assurance, 132—Meaning of "mortgage," 133—(D) Further covenant in mortgage or charge of freeholds subject to a rent or of leaseholds "as beneficial owner," 133—Second Schedule, Part IV., 133—Validity of lease or grant, 133—Payment of rent and performance of covenants, 133—(E) In settlement "as settlor," 133—Second Schedule, Part V., 134—Further assurance, 134—Voluntary settlement, 134—(F) In any conveyance "as trustee," &c., 134—Second Schedule, Part VI., 134—Against incumbrances, 134—In conveyance "by direction of —— as beneficial owner," 135—In conveyance by wife and husband each "as beneficial owner," 135—No implied covenant apart from statutory expressions, 135—Lease not affected, 135—Benefit of covenant, 135—Variation of covenant, 135—Protection of solicitor as to implied covenants, 135 — Leases, 136 — Variation of implied covenants, 136 — Covenant as to right to convey, 136—Covenant against incumbrances, 136—Covenants implied in conveyance on behalf of a lunatic, 137—Further covenants implied in certain conveyances, 137—L. P. Act, 1925, sect. 77...137—(A) Where whole land affected by rentcharge, 137—Second Schedule, Part VII., 137—Covenant by grantee to pay rentcharge, 137—to indemnify conveying party, 137—(B) Where part of land affected by rentcharge, 138—(i) Covenant by grantee, 138—Second Schedule,

Part VIII., para. (i), 138—to pay apportioned rentcharge, 138—to indemnify conveying party, 138—(ii) Covenant by person conveying "as beneficial owner," 138—Second Schedule, Part VIII., para. (ii), 138—to pay balance of rentcharge, 138—to indemnify grantee, 138—(C) Where whole land is in lease, 139—Second Schedule, Part IX., 139—Covenant by assignee to pay rent, 139—to indemnify conveying party, 139—(D) Where part of land is in lease, 139—(i) Covenant by assignee, 139—Second Schedule, Part X., para. (i), 139—to pay apportioned rent, 139—to indemnify conveying party, 139—(ii) Covenant by person conveying "as beneficial owner," 140—Second Schedule, Part X., para. (ii), 140—to pay balance of rent, 140—to indemnify assignee, 140—Where part of land made subject to or exonerated from entire rent, 140—Lease not affected, 140—Trustees, &c., may incorporate certain covenants, 140—Benefit of covenant, 141—Variation of covenant, 141—Power to charge land, 141—Covenants implied in dispositions of registered land, 141—Effect of covenant with two or more jointly, 141—Covenant by a person with himself and others, 142—L. P. Act, 1925, sect. 82...142—Restrictions on user of land, 142—Purchaser, how affected by notice, 142—Statutory powers for discharging or modifying restrictive covenants, 142—Covenants relating to or running with land, 143—General words implied in conveyance of land, buildings, or manor, 143—All estate clause, 145—Words of limitation under former law, 145—Equitable limitations, 145—In the case of corporations, 145—Fee simple may now pass without words of limitation, 146—L. P. Act, 1925, sect. 60...146—As to corporations sole, 146—As to corporations aggregate, 146—Voluntary conveyance, 147—Sale of settled land under the old law, 147—under the new law, 148—behind trust for sale, 148—by married woman, 148—in case of lunatic or defective, 148—Sale of mansion and park, 148—of heirlooms, 148—Assignment of life interest, 148—Payment of capital money, 148—Effect of conveyance on sale of settled land, 148.

PRECEDENTS.

PAGE

I. CONVEYANCE in Fee Simple by an Absolute Owner without Recitals ... 149

II. THE same with Recitals 150

III. CONVEYANCE by a Married Woman seised in Fee Simple under the Old Law ... 150

IV. CONVEYANCE of Freeholds by Appointment under a General Power subject to a Lease. Variations for Apportionment of the Rent 151

V. CONVEYANCE in Contemplation of Marriage of a Freehold in Trust for Sale, with a Declaration of Trust of the Purchase-Money by reference to a Settlement of even date 153

PAGE

VI. CONVEYANCE by Trustees for Sale who before 1926 were beneficially entitled in Undivided Shares as Tenants in Common 154

VII. CONVEYANCE to a Sub-Purchaser 155

VIII. CONVEYANCE of Freeholds by Mortgagor and Mortgagee where Mortgage created after 1925. Variations where created before 1926 156

IX. CONVEYANCE of Freeholds by Chargee by way of Legal Mortgage under his statutory Power of Sale, the Mortgagor not being a Party 158

X. CONVEYANCE of Freeholds by a Mortgagee under his statutory Power of Sale, the Mortgagor not being a Party ... 159

XI. CONVEYANCE of Freeholds by the Executors of a Mortgagee on a Sale under their statutory Power of Sale 160

XII. CONVEYANCE in Fee of an Equity of Redemption 161

XIII. CONVEYANCE of an Equity of Redemption in Freeholds by the Mortgagor to the Mortgagee 162

XIV. CONVEYANCE of Settled Land [and a Right of Way over adjoining land] by person having the Powers of a Tenant for Life 163

XV. CONVEYANCE of Settled Land [with Reservation of Minerals] without Recitals 165

XVI. CONVEYANCE of Freeholds under a Trust for Sale in a Will to Trustees of a Personalty Settlement 168

XVII. CONVEYANCE of Freeholds by the Personal Representatives of a Deceased Person 170

XVIII. CONVEYANCE on sale of Freeholds by a Devisee with the assent of Executors ... 171

XIX. CONVEYANCE of Freeholds sold under an Order of the Court in an Administration Action 172

XX. CONVEYANCE of Freeholds by a Husband to his Wife on a purchase out of her separate property 174

XXI. CONVEYANCE of an Equitable Remainder in Freeholds 174

XXII. CONVEYANCE of a Life Interest in Freeholds 176

		PAGE
XXIII.	CONVEYANCE of a Contingent Reversionary Interest in Freeholds	176
XXIV.	CONVEYANCE of an Advowson	178
XXV.	CONVEYANCE of a Manufactory to Partners as Joint Tenants on Trust for Sale	179
XXVI.	CONVEYANCE of a Base Fee in Freeholds by a Tenant in Tail in Remainder ...	180
XXVII.	ASSIGNMENT in contemplation of Marriage of a Leasehold Messuage upon Trust for Sale	181
XXVIII.	ASSIGNMENT of Leaseholds on a Sale ...	182
XXIX.	ASSIGNMENT of Leaseholds by Executors of the Lessee. By Indorsement on the Lease	184
XXX.	ASSIGNMENT of Leaseholds by Trustee in Bankruptcy	185
XXXI.	ASSIGNMENT of Part of Land held under Lease, with Covenants for securing Payment of a Proportionate Part of the Rent	186
XXXII.	ASSIGNMENT of Lease to one Purchaser of Leasehold sold in Lots so that he may Grant Underleases to the other Purchasers	189
XXXIII.	UNDERLEASE to a Purchaser of Part of a Leasehold sold in Lots, the Lease having been assigned to another Purchaser at the same Sale	191
XXXIV.	ASSIGNMENT of Leaseholds by Mortgagor and Mortgagee	193
XXXV.	ASSIGNMENT of Leaseholds by Mortgagee under his Statutory Power of Sale ...	194
XXXVI.	CONVEYANCE of Freeholds to a Purchaser. Reservation of a Right of Way	196
XXXVII.	CONVEYANCE of Freeholds and Leaseholds to a Purchaser	196
XXXVIII.	CONVEYANCE of Freehold Building Land in consideration of a Rentcharge ...	197
XXXIX.	CONVEYANCE of Freehold Land subject to a Rentcharge	201
XL.	CONVEYANCE of Land (formerly copyhold) Enfranchised under the old law subject to an Apportioned Rentcharge	202
XLI.	CONVEYANCE of Land (formerly copyhold) Enfranchised under the new law	203
XLII.	CONVEYANCE of a Building Plot	205
XLIII.	CONVEYANCE of House and Land subject	

PAGE

to the Restrictions imposed by the previous Conveyance 208
XLIV. ASSIGNMENT of a Policy of Assurance ... 210
XLV. ASSIGNMENT of Letters Patent 211

DECLARATIONS.

PRECEDENTS.

I. DECLARATION of Trust of Contributory Loan 214
II. STATUTORY Declaration as to Identity and Possession of Parcels 215
III. STATUTORY Declaration as to Pedigree ... 216
IV. STATUTORY Declaration by Attorney that the Power is Not Revoked 218
V. STATUTORY Declaration by Officer of Corporation Aggregate appointed to act in Execution of Power given to Corporation that the Power is Not Revoked 218
VI. DECLARATION Supplemental to Principal Vesting Deed that Persons Named are Trustees of the Settlement for the purposes of the Settled Land Act, 1925 219
VII. DECLARATION (by Indorsement on the Mortgage) by Mortgagee converting existing Mortgage in Fee Simple into Charge by way of Legal Mortgage 219

DISCLAIMER.

GENERAL REMARKS.

Disclaimer generally, 220—Of trusts, 220—Of beneficial gifts, 220—By trustee in bankruptcy, 220—By married woman, 221.

PRECEDENTS.

PAGE

I. DISCLAIMER of Trusteeship by one Trustee ... 221
II. DISCLAIMER by two persons of Trusteeship, Executorship [and Guardianship] 222

DISENTAILING DEEDS.

GENERAL REMARKS.

Creation of entailed interests in real and personal property, 224—L. P. Act, 1925, sect. 130...224—Enrolment of certain assurances now unnecessary, 225—Acknowledgments by married women abolished, 226—Power of tenant in tail to dispose by will of fee simple, 226—Disentailing deeds generally, 226.

PRECEDENTS.

PAGE

I. DEED without RECITALS by TENANT in TAIL in POSSESSION to BAR the ENTAIL of FREEHOLDS 226

II. DEED by TENANT in TAIL in REMAINDER with the Consent of the Protector to BAR the ENTAIL of FREEHOLDS and CAPITAL MONEY. Variations where LIFE INTEREST of Protector is Conveyed and a Joint Power of Appointment is limited 227

III. PROTECTOR'S CONSENT to the BARRING of an ENTAILED INTEREST 229

ENLARGEMENT OF LONG TERMS.

GENERAL REMARKS.

Enlargement of long terms into fee simple estates, 231—L. P. Act, 1925, sect. 153...231—Origin of long terms, 232—Rent having no money value, 233—Enlargement by mortgagee, 233—Limitation as to rent not exceeding £1...233—Married woman, 234—Settled land, 234—Conversion of personalty into realty, 234.

PRECEDENTS.

PAGE

I. DEED of ENLARGEMENT of a LONG TERM by a PERSON ABSOLUTELY ENTITLED free from incumbrances ... 234

II. DEED of ENLARGEMENT of a LONG TERM by MORTGAGOR with consent of MORTGAGEE 235

III. DEED of ENLARGEMENT of a LONG TERM by TRUSTEES for SALE under a Will 237

IV. DEED of ENLARGEMENT of a LONG TERM by a TENANT for LIFE, the term being settled to go along with Freeholds under a Settlement existing before 1926 237

V. SUBSIDIARY VESTING DEED SUPPLEMENTAL to PRINCIPAL VESTING DEED and to DEED of ENLARGEMENT of LONG TERM settled by Settlement existing before 1926 239

EXCHANGES.

GENERAL REMARKS.

Modern exchanges, 241—Common law exchanges, 241—Now no implied condition at law, 241—Deed when required, 241—How far an exchange is a sale, 241—Contracts for exchange of land, 241—Applications to the Court, 242—Discharge of incumbrances, 242—Settled land, 242—Universities and colleges, 242—Registration of title in compulsory areas, 242—

Exchanges by Ministry of Agriculture and Fisheries, 243—Stamp duties, 243.

PRECEDENT.

PAGE

DEED of EXCHANGE with Variations where sum paid for EQUALITY of EXCHANGE 243

INDEMNITY DEEDS.

PRECEDENTS.

PAGE

I. BOND of INDEMNITY to a PURCHASER by a VENDOR AGAINST any CLAIM by or through a person believed but not positively known to have died without issue who or whose issue, if existing, might have a claim to One-Fifth of the Lands Sold 245

II. COVENANT of INDEMNITY in respect of LAND CHARGED with an ANNUITY and LEGACY by the Investment of part of the purchase-money in the names of the Vendor and Purchaser and DECLARATION of TRUST ACCORDINGLY 246

LEASES.

GENERAL REMARKS.

Meaning of "lease," 250—Entry not necessary to create estate, 250—Parol leases, 250—Deed when necessary, 250—Agreement for a lease, 250—Expense of preparing lease, 251—Points to be considered in preparing leases, 251—Meaning of "outgoings," 251—Landlord's taxes, 252—Property tax, 253—Tithe rent-charge, 253—Land tax, 253—Sewers rate, 253—Repairing covenants, 253—"Usual" covenants, 254—Stamp duties, 254.

PRECEDENTS.

PAGE

I. AGREEMENT for a LEASE (short form) 255

II. AGREEMENT for a LEASE (full form) 256

III. AGREEMENT for a TENANCY from YEAR to YEAR 257

IV. AGREEMENT for BUILDING LEASES of parts of an ESTATE for laying out STREETS and BUILDING HOUSES 258

V. LEASE of a COTTAGE from YEAR to YEAR ... 264

VI. LEASE of a HOUSE in a TOWN with RESERVATION of SEWER, OPTION of PURCHASE 266

VII. LEASE of a HOUSE NEWLY-DECORATED for a SHORT TERM with COVENANTS by the LESSOR to REPAIR the OUTSIDE and INSURE 269

PAGE

VIII. UNDERLEASE at an advanced rent SUBJECT to the COVENANTS of the original LEASE 271

IX. AGREEMENT to LET COUNTRY HOUSE FURNISHED 272

X. LEASE of a HOUSE and FURNITURE for a TERM determinable at the option of the tenant ... 274

XI. LEASE of a FARM 277

XII. LEASE of a FARM to TWO LESSEES by a TENANT for LIFE of a SETTLEMENT created by a Will 278

XIII. LEASE of a FARM from YEAR to YEAR 282

XIV. LEASE of a MESSUAGE and FACTORY by a person having the POWERS of a TENANT for LIFE under the Settled Land Act, 1925 289

XV. LEASE of a PUBLIC-HOUSE, COVENANT to RENEW 291

XVI. BUILDING LEASE. LESSEE to ERECT HOUSES according to plan 294

XVII. LEASE to BUILDERS of HOUSES erected by them upon Land in the County of London 296

XVIII. MINING LEASE 299

XIX. LEASE of a COLLIERY and SEAM of COAL. VARIATION for BRICK-FIELD 303

XX. LEASE of FREEHOLD HOUSE by MORTGAGOR and MORTGAGEE 311

XXI. LICENCE to ASSIGN a LEASE 313

XXII. SURRENDER of a LEASE 314

MORTGAGES.

GENERAL REMARKS.

New mode of mortgaging land, 316—Mortgage of freeholds, 316—L. P. Act, 1925, sect. 85...316—Mortgage of Leaseholds, 317—L. P. Act, 1925, sect. 86...317—Pre-existing mortgages, 318—Charge by way of legal mortgage, 318—L. P. Act, 1925, sect. 87...318—Declaration converting existing mortgage into legal charge, 318—Forms of legal charges, 319—Definition of parties, 319—Recitals in mortgages, 319—Covenants to pay principal and interest, 320—Covenants for title when implied, 321—Operative words in legal mortgage of freeholds, 321—Operative words in legal mortgage of leaseholds, 322—Proviso for redemption, 322—Statutory receipt on discharge of mortgage, 322—L. P. Act, 1925, sect. 115...322—Operation of receipt as surrender or reconveyance, 322—or as a transfer in certain cases, 323—Reconveyance may be required, 323—Form of receipt, 323—Covenants implied, 323—Where more than one deed, 323—Charge by way of legal mortgage, 323—Building, &c., Societies, 323—Registered charge, 324—Meaning of

"mortgaged property," 324—Form of receipt, 324—Operation of receipt, 324—Payment by instalments, 324—Power to borrower to anticipate payment of part of principal, 324—to redeem part of mortgaged land, 324—Collateral bargain when good, 324—Capitalisation of interest, 325—Continuance of loan, 325—Reduction of interest, 326—Deduction of income tax, 326—Attornment clause, 326—Powers of leasing and of accepting surrenders, 327—L. P. Act, 1925, sects. 99, 100...327-331—Powers of sale, &c., of mortgagee, 331—L. P. Act, 1925, sect. 101...331—Power to sell, 331—to insure, 331—to appoint receiver, 332—to cut timber, 332—Extension of power of sale in mortgages after 1911...332—Mortgage may vary or exclude powers, 332—Undivided shares in land, 333—L. P. Act, 1925, sect. 102...333—Regulation of exercise of power of sale, 333—L. P. Act, 1925, sects. 103-107...333-335—Notice, 333—Interest in arrear, 333—Breach of provisions, 333—Conveyance on sale, 333—Application of proceeds of sale, 334—General provisions as to exercise of power, 334—Mortgagee's receipts, discharges, &c., 335—Form and effect of the conveyance, 335—L. P. Act, 1925, sect. 88...335—Under mortgage or charge of freeholds, 335—Under foreclosure order, 336—Where title by limitation, 336—As to fixtures, &c., 336—Under sub-mortgage, 336—Subject to prior incumbrances, 336—L. P. Act, 1925, sect. 89...336—Under mortgage or charge of leaseholds, 336—Under foreclosure order, 337—Where title by limitation, 337—As to fixtures, &c., 337—Under sub-mortgage, 337—Where all land in lease not included, 337—Statutory provisions as to insurance, 338—L. P. Act, 1925, sect. 108...338—Appointment of receiver generally, 339—Statutory power to appoint receiver, 339—L. P. Act, 1925, sect. 109...339—Appointment, powers, remuneration and duties of receiver, 339—Receivership Deed, 340—Appointment by Court, &c., 340—Power to cut timber, 341—Restriction on consolidation of mortgages, 341—L. P. Act, 1925, sect. 93...341—Further advances and tacking, 342—L. P. Act, 1925, sect. 94...342—Right of mortgagee to possession of documents of title, 343—Indemnity clause, 343—Transfer of mortgages, 343—L. P. Act, 1925, sect. 114...344.

PRECEDENTS.

PAGE

I. CHARGE of Freeholds by way of Legal Mortgage 344

II. CHARGE of Leaseholds by way of Legal Mortgage 346

III. MEMORANDUM accompanying a Deposit of Deeds by way of Equitable Mortgage ... 347

IV. MORTGAGE of Freeholds to one Mortgagee 348

V. MORTGAGE of Leaseholds 349

VI. MORTGAGE of Leaseholds, the Lease not being recited. Provisions for Reduction of

PAGE

Rate of Interest on punctual payment and for Continuance of Loan. 351

VII. CONSOLIDATING Mortgage of Freeholds for an Aggregate Sum consisting of previous Mortgage Debts transferred to Mortgagees and Further Advance where Land subject to prior annual and other charges 352

VIII. MORTGAGE of Freeholds with Provisions for Payment by Instalments to Anticipate Payments and to Redeem Part of Mortgaged Land. No Recitals 355

IX. MORTGAGE of Freeholds and Leaseholds 356

X. MORTGAGE by Joint Tenants of Enfranchised Copyholds subject to a Rent-charge 358

XI. MORTGAGE by Partners to a Bank for Securing an Account Current 359

XII. MORTGAGE of a Policy of Assurance for Securing a Sum Already Due and Further Advances 362

XIII. MORTGAGE of Life Interest in Land and a Policy of Assurance to several. Variations for a Stock Mortgage 364

XIV. MORTGAGE of a Contingent Interest in Freeholds and of a Policy of Assurance in the name of the Mortgagee 367

XV. MORTGAGE of Life Interest in Settled Personal Estate and of Policies of Assurance 368

XVI. MORTGAGE of Reversionary Interest in Funds in Court. Provision for Payment of Compound Interest 370

XVII. MORTGAGE to Assurance Society of Reversionary Interest in Settled Personal Estate and Policies Granted by the Society. Provision for Continuance of Loan until fund falls into possession or Death of Mortgagor. Interest to be Capitalised 372

XVIII. FURTHER Charge by Supplemental Deed upon a Life Interest in Settled Personal Estate and a Policy, a fresh Policy being Added to the Security 375

XIX. MORTGAGE of Freeholds Subject to Prior Charges, a Surety Joining 377

XX. MORTGAGE of Freeholds where a Prior Mortgage joins to postpone his security ... 378

PAGE

XXI. MORTGAGE of Freeholds by Tenant for Life of Settled Land where, on the marriage of the son, the father and son have a Joint General Power of Appointment over the Settled Land 380

XXII. MORTGAGE of a Term of Years for Raising a Portion 382

XXIII. MORTGAGE of Freeholds by the Personal Representatives of a Deceased Person 384

XXIV. DEED of Further Charge by Indorsement 386

XXV. MORTGAGE to a Building Society of Freeholds and Leaseholds 387

XXVI. SUB-MORTGAGE of a Mortgage of Freeholds 391

XXVII. TRANSFER of a Mortgage of Freeholds by Supplemental Deed, the Mortgagor not being a Party 394

XXVIII. TRANSFER by Indorsement of a Mortgage of Freeholds upon an Appointment of New Trustees, the Mortgagor not being a Party 395

XXIX. TRANSFER to Trustees of Mortgage Debt and Securities in Contemplation of Marriage and upon trusts to be declared by a Settlement of even date 396

XXX. TRANSFER of a Mortgage of Freeholds by Independent Deed by One Continuing and One Retiring Trustee to the Continuing and New Trustees 398

XXXI. TRANSFER (by Independent or Supplemental Deed) of a Mortgage of Freeholds, the Equity of Redemption having been Incumbered, and the Owner being a Party and Covenanting for Payment of the Mortgage Debt and Interest 399

XXXII. TRANSFER of a Mortgage of Freeholds by the Executors of the Mortgagee, the Equity of Redemption not having been Incumbered. The Mortgagor Receives a Further Advance 401

XXXIII. TRANSFER of a Mortgage of Leaseholds by Indorsement, the Mortgagor Being a Party, Part of the Debt having been Paid Off 403

XXXIV. SURRENDER of Mortgage Terms in Freeholds and Leaseholds, on Payment Off of the Mortgage 405

PAGE

XXXV. STATUTORY Example of a Charge by way of Legal Mortgage 406

XXXVI. STATUTORY Example of a Further Charge by way of Legal Mortgage 406

XXXVII. STATUTORY Example of Transfer of Mortgage 407

XXXVIII. STATUTORY Example of a Receipt on Discharge of a Mortgage 408

XXXIX. STATUTORY Charge by way of Legal Mortgage 408

XL. STATUTORY Transfer, Mortgagor not Joining 409

XLI. STATUTORY Transfer, a Covenantor Joining 409

XLII. STATUTORY Transfer and Mortgage Combined 410

XLIII. RECEIPT on Discharge of Statutory Legal Charge or Mortgage 411

CONCISE PRECEDENTS IN CONVEYANCING.

ABSTRACTS.

General Remarks.

Right of purchaser to an abstract.

An "abstract" gives a bird's-eye view and may be described as a map of the title. Although once a moot point whether a purchaser was entitled to an abstract or only to inspect the original documents, it has long been well settled that he can insist upon an abstract of the title prior to his examination of the documents themselves: see Sug. V. & P. (1862), 406. That a purchaser generally is entitled, under a contract for the sale of land, to delivery of the abstract at the expense of the vendor is (apart from express agreement to the contrary) an implied term of every such contract (see *Re Pelly and Jacob* (1899), 80 L. T. 45), and it is further implied that such abstract should be a "perfect" abstract; that is to say, one which on the face of it shows a good title: see *Morley* v. *Cook* (1842), 2 Hare, 106, 111; *Sherwin* v. *Shakspear* (1854), 5 D. M. & G. 517; *Re Balen & Shepherd*, [1924] 2 Ch. 365.

Sale in lots.

But a purchaser of two or more lots, held under the same title, is not entitled to more than one abstract of the common title, except at his own expense: see L. P. Act, 1925, sect. 45, sub-sect. (5), set out under Contracts, &c., General Remarks. It is also sometimes provided that a purchaser of a lot whose purchase money does not exceed a specific sum shall not be entitled to an abstract except at his own expense, but in that case an opportunity should be provided for inspecting the abstract at the office of the vendor's solicitor: see Dav. Prec. Conv., 5th ed., Vol. I., 438.

Registered land.

As to what abstracts of title can be required in the case of registered land, see L. R. Act, 1925, sect. 110 (set out in Contracts, General Remarks).

Right to see documents prior to title.

The purchaser's right to an abstract is generally confined to the period within which by law, or by express agreement, title is to be shown: see L. P. Act, 1925, sect. 45, sub-sect. (1) (set out under Contracts, General Remarks); but see the proviso

(which is new) entitling the purchaser to the production or an abstract or copy of (i) a power of attorney under which an abstracted document is executed, or (ii) a document creating or disposing of an interest, power, or obligation not shown to have ceased or expired, and subject to which the property is disposed of by an abstracted document, or (iii) a document creating a limitation or trust by reference to which the property is disposed of by an abstracted document. This proviso appears to give the vendor the right, alternatively, (a) to produce the original, or (b) a copy, or (c) to deliver an abstract, and not to impose the duty primarily of delivering an abstract of such document.

Supplemental instrument.

Although a supplemental instrument has the effect as if it contained a full recital of the previous document, this does not give a purchaser the right to an abstract or production of the previous instrument: see L. P. Act, 1925, sect. 58 (set out in CONVEYANCES, General Remarks).

Contents of abstract.

The mere form in which documents are abstracted, the practice as to which is well known, will probably not undergo any substantial variation. The difficulty under the new law will be to decide what documents should be included and what excluded so as to show a good title.

Title to be shown to legal estates.

By sect. 10, sub-sect. (1) of the L. P. Act, 1925, it is enacted as follows:—

L. P. Act, 1925, s. 10 (1).

> **10.**—(1) Where title is shown to a legal estate in land, it shall be deemed not necessary or proper to include in the abstract of title an instrument relating only to interests or powers which will be over-reached by the conveyance of the estate to which title is being shown; but nothing in this Part of this Act affects the liability of any person to disclose an equitable interest or power which will not be so overreached, or to furnish an abstract of any instrument creating or affecting the same.

In framing an abstract it is therefore essential to have a clear understanding as to (1) what are legal estates as distinguished from equitable interests; and (2) what equitable interests will be, and what will not be, over-reached by any such legal estate. It is on the true appreciation of the changes effected by the new law that these questions will be solved in dealing with land. These provisions do not, it is thought, affect dealings with equitable interests only, an abstract of the title to which would be based upon the previously existing practice.

Meaning of "legal estates."

"Legal estates" are defined by the L. P. Act, 1925, as "the estates, interests and charges, in or over land (subsisting

or created at law) which are by this Act authorised to subsist or to be created as legal estates " : sect. 205, sub-sect. (1) (x).

In order to explain this definition, it is necessary, therefore, to refer to sect. 1 of the same Act, which is as follows :—

1.—(1) The only estates in land which are capable of subsisting or of being conveyed or created at law are— L. P. Act, 1925, s. 1.

(a) An estate in fee simple absolute in possession ;

(b) A term of years absolute.

(2) The only interests or charges in or over land which are capable of subsisting or of being conveyed or created at law are—

(a) An easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute ;

(b) A rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute ;

(c) A charge by way of legal mortgage ;

(d) Land tax, tithe rentcharge, and any other similar charge on land which is not created by an instrument ;

(e) Rights of entry exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose, to a legal rentcharge.

(3) All other estates, interests, and charges in or over land take effect as equitable interests.

(4) The estates, interests, and charges which under this section are authorised to subsist or to be conveyed or created at law are (when subsisting or conveyed or created at law) in this Act referred to as " legal estates," and have the same incidents as legal estates subsisting at the commencement of this Act ; and the owner of a legal estate is referred to as " an estate owner " and his legal estate is referred to as his estate.

(5) A legal estate may subsist concurrently with or subject to any other legal estate in the same land in like manner as it could have done before the commencement of this Act.

(6) A legal estate is not capable of subsisting or of being created in an undivided share in land or of being held by an infant.

(7) Every power of appointment over, or power to convey or charge land or any interest therein, whether created by a statute or other instrument or implied by law, and whether created before or after the commencement of this Act (not being a power vested in a legal mortgagee or an estate owner in right of his estate and exercisable by him or by another person in his name and on his behalf), operates only in equity.

(8) Estates, interests, and charges in or over land which are not legal estates are in this Act referred to as " equitable interests," and powers which by this Act are to operate in equity only are in this Act referred to as " equitable powers."

(9) The provisions in any statute or other instrument requiring land to be conveyed to uses shall take effect as directions that the land shall (subject to creating or reserving thereout any legal estate authorised by this Act which may be required) be conveyed to a person of full age upon the requisite trusts.

(10) The repeal of the Statute of Uses (as amended) does not affect the operation thereof in regard to dealings taking effect before the commencement of this Act.

Meaning of "estate owner."

As to the reference in sub-sect. (4) to "an estate owner," see the definition of "estate owner" in sect. 205, sub-sect. (1) (v). The rest of sub-sect. (4) is a mere repetition in other language of the definition of "legal estates" in sect. 205, sub-sect. (1) (x).

Legal powers.

A power vested in a legal mortgagee or an estate owner, under which, in right of his estate, a legal estate can be transferred or created, is a legal power, as opposed to powers which operate only in equity: see sub-sect. (7). Compare the definition of "legal powers" in sect. 205, sub-sect. (1) (xi). Legal powers may be either common law or statutory, or expressly conferred by some instrument; for example, (a) the powers of an absolute owner; (b) powers conferred by the S. L. Act, 1925; (c) the powers of trustees for sale; (d) the powers of a mortgagee implied by statute or expressly conferred by the mortgage; (e) the powers of a personal representative as such; (f) powers under an order of the Court: compare L. P. Act, 1925, sect. 2.

Equitable interests.

Equitable interests comprise all estates, interests and charges in or over land (or in the proceeds of sale thereof) which are not legal estates: see sect. 1, sub-sects. (3) and (8), and sect. 205, sub-sect. (1) (x). For example, a life interest, which was formerly a legal estate, is now merely an equitable interest.

An equitable interest "capable of subsisting as a legal estate" means such as could validly subsist or be created as a legal estate under the Act (sect. 205, sub-sect. (1) (x))—for example, an equitable fee-simple or equitable term of years absolute, which, upon getting in the outstanding legal estate, becomes a legal fee-simple or term.

Equitable powers.

The description in sub-sect. (7), above, of powers which operate only in equity is an enlargement of the definition in sect. 205, sub-sect. (1) (xi).

Legal estate overreaching what interests and powers.

In further elucidation of sect. 10, sub-sect. (1) of the L. P. Act, 1925, as to an abstract showing title to a legal estate, the solicitor preparing the abstract has to consider what interests and powers will be overreached by the conveyance of the legal estate, and therefore need not be included, and those which, not being so overreached, ought to be disclosed.

To arrive at a conclusion it will be necessary for him to consider the provisions of sect. 2 of the Act, which are as follows:—

L. P. Act, 1925, s. 2.

2.—(1) A conveyance to a purchaser of a legal estate in land shall overreach any equitable interest or power affecting that estate, whether or not he has notice thereof, if—

(i) the conveyance is made under the powers conferred by the Settled Land Act, 1925, or any additional powers conferred by a settlement, and the equitable interest or power is capable of being overreached thereby, and the statutory requirements respecting the payment of capital money arising under the settlement are complied with;

(ii) the conveyance is made by trustees for sale and the equitable interest or power is at the date of the conveyance capable of being overreached by such trustees under the provisions of subsection (2) of this section or independently of that subsection, and the statutory requirements respecting the payment of capital money arising under a disposition upon trust for sale are complied with;

(iii) the conveyance is made by a mortgagee or personal representative in the exercise of his paramount powers, and the equitable interest or power is capable of being overreached by such conveyance, and any capital money arising from the transaction is paid to the mortgagee or personal representative;

(iv) the conveyance is made under an order of the court and the equitable interest or power is bound by such order, and any capital money arising from the transaction is paid into, or in accordance with the order of, the court.

(2) Where the legal estate affected is not, when the equitable interest or power is created, subject to a trust for sale or a settlement, then, if the estate owner, whether before or after the commencement of this Act, disposes of his estate to trustees upon trust for sale, and at the date of a conveyance made, after such commencement, under the disposition upon trust for sale the trustees (whether original or substituted) are either—

(a) two or more individuals approved or appointed by the court or the successors in office of the individuals so approved or appointed; or

(b) a trust corporation,

such equitable interest or power shall, notwithstanding any stipulation to the contrary, be overreached by the conveyance, and shall, according to its priority, take effect as if created or arising by means of a primary trust affecting the proceeds of sale and the income of the land until sale.

(3) The following equitable interests and powers are excepted from the operation of subsection (2) of this section, namely—

(i) Any equitable interest protected by a deposit of documents relating to the legal estate affected;

(ii) The benefit of any covenant or agreement restrictive of the user of land;

(iii) Any easement, liberty, or privilege over or affecting land and being merely an equitable interest (in this Act referred to as an "equitable easement");

(iv) The benefit of any contract (in this Act referred to as an "estate contract") to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option to purchase, a right of pre-emption, or any other like right;

(v) Any equitable interest protected by registration under the Land Charges Act, 1925, other than—

(a) an annuity within the meaning of Part II. of that Act;

(b) a limited owner's charge or a general equitable charge within the meaning of that Act.

(4) Subject to the protection afforded by this section to the purchaser of a legal estate, nothing contained in this section shall deprive a person entitled to an equitable charge of any of his rights or remedies for enforcing the same.

(5) So far as regards the following interests, created before the commencement of this Act (which accordingly are not within the provisions of the Land Charges Act, 1925), namely—

(a) the benefit of any covenant or agreement restrictive of the user of the land;

(b) any equitable easement;

(c) the interest under a puisne mortgage within the meaning of the Land Charges Act, 1925, unless and until acquired under a transfer made after the commencement of this Act;

(d) the benefit of an estate contract, unless and until the same is acquired under a conveyance made after the commencement of this Act;

a purchaser of a legal estate shall only take subject thereto if he has notice thereof, and the same are not overreached under the provisions contained or in the manner referred to in this section.

Land charges and notice.

Sub-sect. (3) shows the importance to the purchaser of searching under the L. C. Act, 1925, for interests created after 1925 which are capable of registration as land charges; and sub-sect. (5) the importance of notice in the cases of certain interests created before 1926 and which were not capable of being so registered.

As to when and how far registration in a Local Deeds Registry or under the L. C. Act, 1925, constitutes notice, see sects. 197, 198, and 199 of the L. P. Act, 1925.

Protection of vendor's solicitor.

The solicitor of the vendor (however honestly trying to frame his abstract in accordance with the new law) is still, it would seem, responsible if he omits to disclose any interest or power which will not be overreached by the conveyance of the legal estate, for the protection afforded by sect. 10, sub-sect. (2) of the Act does not extend to such an omission, and, when carefully examined, is somewhat meagre. The sub-section is as follows :—

L. P. Act, 1925, s. 10 (2)

(2) A solicitor delivering an abstract framed in accordance with this Part of this Act shall not incur any liability on account of an omission to include therein an instrument which, under this section, is to be deemed not necessary or proper to be included, nor shall any liability be implied by reason of the inclusion of any such instrument.

It may be more prudent and proper in cases of doubt for the vendor's solicitor to disclose all material facts likely to affect the title.

Fraudulent concealment of documents and falsification of pedigrees.

The provisions of the L. P. Act, 1859, sect. 24 (as amended by the L. P. Act, 1860, sect. 8), as to fraudulent concealment of documents and falsification of pedigrees, are now replaced with alterations by sect. 183 of the L. P. Act, 1925, which is as follows :—

L. P. Act, 1925, s. 183.

183.—(1) Any person disposing of property or any interest therein for money or money's worth to a purchaser, or the solicitor or other agent of such person, who—

(a) conceals from the purchaser any instrument or incumbrance material to the title; or

(b) falsifies any pedigree upon which the title may depend in order to induce the purchaser to accept the title offered or produced;

with intent in any of such cases to defraud, is guilty of a misdemeanour punishable by fine, or by imprisonment for a term not exceeding two years, or by both.

(2) Any such person or his solicitor or agent is also liable to an action for damages by the purchaser or the persons deriving title under him for any loss sustained by reason of—

(a) the concealment of the instrument or incumbrance; or

(b) any claim made by a person under such pedigree whose right was concealed by such falsification as aforesaid.

(3) In estimating damages, where the property or any interest therein is recovered from the purchaser or the persons deriving title under him, regard shall be had to any expenditure by him or them in improvements of any land.

(4) No prosecution for any offence under this section shall be commenced without the leave of the Attorney-General.

(5) Before leave to prosecute is granted there shall be given to the person intended to be prosecuted such notice of the application for leave to prosecute as the Attorney-General may direct.

Delivery of abstract.

The abstract, having been prepared at the expense of the vendor, should be delivered either within the time, if any, mentioned in the contract, or within a reasonable time after its execution : see *Compton* v. *Bagley*, [1892] 1 Ch. 313. Where there was a condition to deliver the abstract "immediately after the sale," delivery on the fifth day was held not to be a compliance with the condition so as to bind the purchaser to deliver requisitions within the time specified from delivery of the abstract : *Re Todd and M'Fadden*, [1908] 1 I. R. 213, following *Upperton* v. *Nickolson* (1871), L. R. 6 Ch. 436.

Requisitions on title.

The purchaser, then, having perused the abstract, should compare it with the original documents and make any requisitions on title which he thinks advisable, the time within which such requisitions may be made being generally limited by the conditions in the contract. His right to make requisitions is also often limited by the contract on special points of title. Moreover, in every contract he is by law precluded from making

requisitions as to the title prior to the time prescribed by law or stipulated for the commencement of the title, subject to the exceptions above noticed : L. P. Act, 1925, sect. 45, sub-sect. (1) (set out under CONTRACTS, &c., General Remarks).

Verification of abstract and requisitions.

The most obvious requisitions are those which require verification of the abstract. As to the documents abstracted, those in the possession of the vendor or his mortgagee or trustee can be examined and compared with the abstract, but as to those not in such possession, the purchaser can only require them at his own expense : L. P. Act, 1925, sect. 45, sub-sect. (4) (a) (set out under CONTRACTS, &c., General Remarks). So as to facts abstracted, the verification, where the documentary evidence is not in the possession of the vendor or his mortgagee or trustee, can only be required at his own expense : sect. 45, sub-sect. (4) (b). See *Re Wright and Thompson*, [1920] 1 Ch. 191.

Searches for land charges, etc.

Searches should be made according to circumstances for land charges, &c., and, as already stated, these may be of special importance as showing equitable interests which are not overreached, and such searches should, it is thought, be more prudently made before the time for sending in requisitions has expired. The L. C. Act, 1925, should be carefully studied; and as to the power to search and official searches, see sects. 16 and 17.

Statutory examples of abstracts.

By sect. 206, sub-sect. (2) of the L. P. Act, 1925, "Examples of abstracts of title framed in accordance with the enactments which will take effect at the commencement of this Act are contained in the Sixth Schedule to this Act." These forms, which for some time will be a useful guide to the vendor's solicitor in framing his abstract, are set out below.

PRECEDENTS.

Statutory Specimens of Epitomes of Abstracts of Title (*a*).

I.

PRECEDENT I. — STATUTORY SPECIMEN No. 1.

Specimen No. 1.

Of the title of John Williams to Blackacre.

Where the Title commences before the commencement of this Act.

The italics show how the abstract is to be framed and what documents are to be abstracted. After the commencement of this Act, the parts not in italics may be ignored.

Will of H. Jones, appointing Maria Jones and W. Jones executors and Settled Land Act trustees. — June 10, 1897.

Devises, Blackacre.

To the use that Maria Jones may receive a yearly rentcharge of five hundred pounds for her life, and, subject thereto,

To the use of W. Jones for life with remainder,

To the use of X. and Y., for a term of one thousand years, and subject thereto,

To the use of the first and other sons of W. Jones in tail with remainders over.

Trusts of term of one thousand years declared for raising ten thousand pounds for portions for younger children of W. Jones, as he shall appoint, and in default equally.

Hotchpot Clause. Power to appoint new trustees.

Death of H. Jones. — June 4, 1898.

Will of H. Jones proved. — Aug. 1, 1898.

[Note.—After the execution of the Vesting Deed the will only takes effect in equity and can be withdrawn from the abstract when not required as a root of title.]

Conveyance by the executors to the uses of the Will. — Aug. 20, 1899.

Appointment of R. and S. to be Settled Land Act trustees of the will in place of Maria Jones and W. Jones who retire. — Sept. 2, 1915.

The Settled Land and Law of Property Acts, 1925, come into operation. — Jan. 1, 1926.

[Note.—The legal estate in fee simple will vest in W. Jones in fee simple, but he cannot deal with it till the vesting deed is executed.]

Deed by the Settled Land Act trustees declaring the fee simple — Jan. 20, 1926.

(*a*) These Statutory Specimens of Abstracts are taken from the Sixth Schedule to the L. P. Act, 1925, and are of special importance as being practical examples showing how the new scheme of conveyancing is intended to be worked. See General Remarks, above. Forms of many of the instruments referred to in these Specimens will be found in the Precedents to this work.

PRECEDENT I.

is vested in W. Jones on the trusts of the Will and stating that they are the trustees of the settlement.

Feb. 2, 1926. Appointment by W. Jones of five thousand pounds, part of the ten thousand pounds, to his daughter Ann Jones.

Feb. 3, 1926. Assignment by Ann Jones of her five thousand pounds, part of the ten thousand pounds raisable for portions, to trustees *F.* and *G.* on her marriage to J. Robinson.

Feb. 4, 1926. Will of W. Jones, appointing T. Brooks his executor.

March 6, 1926. Death of W. Jones leaving three children, Frederick Jones, his eldest son, and E. Jones and Ann Robinson.

April 2, 1926. Disentail by Frederick Jones in trust for himself in fee simple.

May 3, 1926. *Will of W. Jones proved by R. and S. in regard to the settled land.*

June 6, 1926. Mortgage by E. Jones of his one-half of the ten thousand pounds to *K.*

Dec. 1, 1926. Death of Maria Jones, jointress.

Jan. 2, 1927. Release by *F.* and *G.* on payment to them of the five thousand pounds of Ann Robinson.

Same date. Release by E. Jones and *K.*, his mortgagee, of the five thousand pounds raisable for E. Jones.

Jan. 3, 1927. *Assent by R. and S., as personal representatives to Frederick Jones in fee, without nominating Settled Land Act trustees.*

[NOTE.—If the Assent had been made before the family charges had been cleared, the personal representatives would have nominated themselves as being the trustees of the settlement, and a discharge from them would have been required when the charges were cleared.]

Feb. 6, 1927. *Mortgage either by charge by way of legal mortgage or for a term of one thousand years by Frederick Jones to the Estate Trustees of the C. Assurance Society to secure five thousand pounds and interest.*

March 20, 1927. Second mortgage either by charge by way of legal mortgage or for a term of two thousand years by Frederick Jones to *D.*, to secure three thousand pounds and interest.

June 1, 1927. Third mortgage either by charge by way of legal mortgage or for a term of three thousand years by Frederick Jones to *E.*, to secure two thousand pounds and interest.

Aug. 8, 1927. Conveyance by Frederick Jones on his marriage (subject to above mortgages) to *M.* and *N.* upon trust for sale, the proceeds of sale being settled by a deed of even date.

Nov. 12, 1927. Death of *M.*

Dec. 20, 1927. Appointment of *F.* as trustee of the conveyance on trust for sale in the place of *M.*, and jointly with *N.*

June 10, 1928. *Conveyance by the then Estate Trustees of the C. Assurance Society, under their power of sale as first mortgagees, to John Williams in fee.*

[NOTE.—The title being made under the power of sale of the Estate

Trustees, the fee simple passes and not merely the mortgage term. They can if desired convey the fee in the names of *M.* and *N.* It is unnecessary to disclose the second and third mortgages or the conveyance on trust for sale. It would have been necessary to disclose them if title had been made by the trustees for sale, as the mortgages and the conveyance all dealt with legal estates. The right to vest the debt and mortgaged property in Estate Trustees by memorial enrolled under a Private Act is preserved.

PRECEDENT I.

STATUTORY SPECIMEN No. 1.

No evidence of deaths, births, &c., is required. Probate of the will of H. Jones is conveyancing evidence of his death.]

John Williams leaves Great Britain and Northern Ireland is believed to be alive but cannot be found. — Jan. 12, 1929.

Private Act passed authorising the X. Company to acquire Blackacre under compulsory powers. — Aug. 10, 1929.

Statutory declaration as to facts known with reference to John Williams. — June 15, 1930.

Deed Poll by X. Company (who by their agent also execute in the name of John Williams) under section seventy-seven of the Lands Clauses Consolidation Act, 1845, vesting the land in themselves. — June 16, 1930.

[NOTE.—This is an example of an exercise of a power over a legal estate the operation of which is expressly preserved.]

II.

SPECIMEN NO. 2.

PRECEDENT II.

STATUTORY SPECIMEN No. 2.

OF THE TITLE OF THE TRUSTEES OF FRANK SMITHERS TO GREENACRE.

RELATING TO UNDIVIDED SHARES.

Mortgage by James Smith of Greenacre to M. Coy., Ltd. in fee to secure £1,000 and interest. — Jan. 2, 1910.

Will of James Smith devising Greenacre to his ten children named therein in equal shares and appointing E. to be his executor. — Feb. 4, 1910.

Death of James Smith, leaving the ten children surviving. — March 1, 1910.

Probate by E. — April 3, 1910.

Assent by E. to the devise to the ten children. — Dec. 4, 1910.

Mortgage by one of the sons of his tenth share. — Jan. 5, 1911.

Conveyance by one of the daughters on her marriage of a tenth share to trustees on trust for sale, the net proceeds to be held on the trusts of her settlement of even date. — April 15, 1911.

Settlement by another of the sons of his tenth share and appointing Settled Land Act trustees. — May 20, 1911.

June 8, 1913. Will of another daughter devising her tenth to her husband and appointing him executor.

June 20, 1913. Death of the testatrix.

Aug. 4, 1913. Probate by her husband.

May 2, 1918. Death of another son intestate.

July 30, 1918. Letters of administration granted to two of his brothers.

Jan. 1, 1926. The Law of Property Act, 1925, comes into operation and vests Greenacre, subject only to the mortgage of 1910 affecting the entirety (which is converted into a mortgage for a term of three thousand years), in the Public Trustee, pending the appointment of new trustees, on trust for sale.

June 4, 1926. *Order of the court (Chancery Division) made on the application of persons entitled to six tenths, appointing M. and N. to be trustees of the trust affecting Greenacre in place of the Public Trustee.*

May 7, 1927. *Conveyance on sale to Walter Robinson by M. and N., the M. Company, Limited, being paid off out of part of the purchase money, and joining to surrender the three thousand years term.*

[Note.—The balance of the purchase-money is available in the hands of the trustees to answer the claims of the mortgagee and other persons interested in undivided shares.]

June 4, 1927. Will of Walter Robinson devising and bequeathing Greenacre and his residuary real and personal estate to *X.* and *Y.* upon trust for his son John Robinson for life with remainder upon trust for his first and other sons successively according to seniority in tail male with remainder upon trust for the same sons in tail general with remainder upon trust for all the daughters of John Robinson as tenants in common in tail with cross remainders in tail between them in equal shares. Appointment of *X.* and *Y.* to be executors and Settled Land Act trustees.

Dec. 1, 1927. Death of testator.

April 20, 1928. *Probate by X. and Y.*

May 3, 1928. *Assent by X. and Y. vesting the settled land in John Robinson upon the trusts of the will of Walter Robinson, and stating that they are the trustees of the settlement.*

July 14, 1928. Will of John Robinson appointing his daughters Mary Robinson and Jane Robinson his executors.

March 16, 1930. Death of John Robinson without having had a son and leaving five daughters.

June 12, 1930. *Probate by X. and Y. in regard to the settled land.*

July 25, 1930. *Assent by X. and Y. to the vesting of the settled land in themselves on trust for sale, the net proceeds to be held on the trusts of the will of Walter Robinson.*

Conveyance on sale by X. and Y. of Greenacre to Frank Smithers in fee. Jan. 7, 1931.

Equitable charge by Frank Smithers to James Montagu by way of indemnity and agreement to vest Greenacre in a trust corporation on trust for sale to raise the money when the amount is ascertained and for other purposes. Jan. 8, 1931.

[NOTE.—A mere equitable charge not secured by deposit of documents can be overridden when the land is made subject to a trust for sale without joining the chargee.]

Lease by Frank Smithers of part of Greenacre to his wife for life at a rent. Jan. 9, 1932.

[NOTE.—A lease for life is made to take effect as a demise for a term of ninety years determinable by notice after the death of the lessee by his representatives or by the lessor.]

Conveyance by Frank Smithers, of Greenacre, to a trust corporation on trust for sale subject to the lease. The net proceeds to be held on the trusts of a deed of even date, under which effect is given to the Agreement of 1931. June 23, 1933.

III.

SPECIMEN NO. 3.

PRECEDENT III.

STATUTORY SPECIMEN No. 3.

OF THE TITLE OF R. HORNE TO WHITEACRE.

WHERE THE TITLE COMMENCES AFTER THE COMMENCEMENT OF THIS ACT.

Settlement by John Wilson, being a deed declaring that Whiteacre is vested in himself in fee upon the trusts of a deed of even date. July 4, 1926.

Appointment of R. and S. to be trustees for the purposes of the Settled Land Act, 1925.

Provisions extending the powers conferred by the Settled Land Act, so far as they relate to dealings with land, and giving power for John Wilson during his life to appoint new trustees.

Trust Instrument. Same date.

Trusts declared for John Wilson for life, with remainder.

Upon trust that Elizabeth Wilson if she survives him shall have a rentcharge of £200 during the residue of her life, and subject thereto.

Upon trust for *R.* and *S.* for a term of five hundred years to raise five thousand pounds portions for younger children of John Wilson, with remainder.

Upon trust for Henry Wilson for life, with remainder.

PRECEDENT III.

STATUTORY SPECIMEN No. 3.

Upon trust for *H.* and *K.* for a term of one thousand years to raise five thousand pounds portions for younger children of Henry Wilson, with remainder.

Upon trust for the first and other sons of Henry Wilson successively in tail, with further remainders over. Appointment of *R.* and *S.* to be Settled Land Act trustees. Extension of Settled Land Act powers by reference to the Vesting Deed of even date or otherwise. Power for tenant for life of full age to appoint new trustees.

Sept. 4, 1926. Appointment of new trustee of the Trust Instrument and of the five hundred years' term.

Recites that *S.* is incapable of acting. Appointment by John Wilson of *P.* to be trustee of the term of five hundred years and for the purposes of the Trust Deed in the place of *S.* and jointly with *R.* Declaration (express or implied) vesting the equitable term of five hundred years in *R.* and *P.*

Same date. *Deed stating that R. and P. are the trustees of the settlement. Memorandum of the deed endorsed on the Vesting Deed.*

Jan. 7, 1927. Will of John Wilson appointing Isaac James and Joseph James executors.

Sept. 3, 1927. Death of John Wilson, leaving younger children and his widow.

April 4, 1928. *Will of John Wilson proved by R. and P. in regard to the settled land.*

Oct. 1, 1928. Assignment by *R.* and *P.* to *B.* of term of five hundred years by way of mortgage for securing five thousand pounds and interest.

[NOTE.—As money has been raised on the term the mortgagee could call on the executors to create a legal term for securing it in priority to the settlement.]

Dec. 2, 1928. *Assent by R. and P., as personal representatives, to the vesting of the settled land in Henry Wilson in fee upon the trusts of the Trust Deed.*

Statement that R. and P. are the trustees of the settlement. Power for Henry Wilson during his life to appoint new Trustees.

The same provisions for extending powers conferred by the Settled Land Act as are contained in the Vesting Deed.

[NOTE.—These may be inserted either expressly, if short, or by reference to the former Vesting Deed, if long.]

June 2, 1929. Appointment of James Cook and Harry Cook to be trustees of the Trust Deed.

June 2, 1929. *Deed stating that they are the trustees of the settlement. Endorsement of notice on the Vesting Deed.*

Nov. 4, 1929. Transfer of the mortgage for five thousand pounds by *B.* to *C.*

July 10, 1930. Death of Henry Wilson, leaving Thomas Wilson, his eldest son, and two younger children.

Letters of Administration to the settled land of Henry Wilson granted to James Cook and Harry Cook. — Oct. 1, 1930.

Disentail by Thomas Wilson. — Nov. 3, 1930.

Release by *C.* on payment off of his mortgage debt of five thousand pounds and surrender of the equitable term of five hundred years. — Nov. 4, 1930.

Death of Elizabeth Wilson. — Nov. 10, 1930.

[Note.—Though her jointure took effect in equity only she has power to create a term of years absolute for raising arrears of the jointure, and the estate owner would be bound to give legal effect to a mortgage of the term.]

Release by two younger children of Henry Wilson of their portions. — Nov. 20, 1930.

Demise by Thomas Wilson to *L.* and *M.* for an equitable term of eight hundred years, subject to cesser on payment of five thousand pounds and interest. — Same date.

Demise by James Cook and Harry Cook to L. and M. for the term of eight hundred years, subject to cesser on redemption or charge by way of legal mortgage. — Same date.

Assent by them to the vesting of the settled land, subject to the term or legal charge, in Thomas Wilson in fee, without nominating Settled Land Act trustees. — Same date.

Conveyance by Thomas Wilson and L. and M. to R. Horne in fee. — March 10, 1931.

IV.

PRECEDENT IV.

STATUTORY SPECIMEN No. 4.

Specimen No. 4.

Of the Title of the Administrators of M. Curtis to Rich and Middle Farms.

Relating to Infants.

Will of James Wilcox devising Rich Farm and Middle Farm to the use of his elder son John Wilcox (an infant) for his life with remainders over for the issue of John Wilcox which failed with remainder to the use of his younger son Gilbert Wilcox (an infant) for his life with remainders over. Appointment of *X.* and *Y.* to be executors and Settled Land Act trustees. — Jan. 2, 1922.

Death of testator, leaving his two sons, giving dates of their births. — Feb. 4, 1922.

Probate by X. and Y. — May 12, 1922.

Assent to the devise, John Wilcox being still an infant. — Dec. 15, 1922.

The Settled Land Act, 1925, and The Law of Property Act, 1925, come into force and vest the settled land in *X.* and *Y.* as — Jan. 1, 1926.

PRECEDENT IV.

Settled Land Act trustees by reason of John Wilcox being an infant.

Jan. 4, 1926. *Instrument declaring that the settled land is vested in X. and Y.*

June 3, 1926. Death of John Wilcox a bachelor and an infant.

Sept. 29, 1926. *Conveyance on sale of Rich Farm by X. and Y. to M. Curtis.*

Oct. 12, 1927. *Conveyance by X. and Y. vesting Middle Farm in Gilbert Wilcox (who had attained full age) on the trusts of the will of James Wilcox with a statement that they are the trustees of the settlement.*

Nov. 10, 1927. *Conveyance on sale of Middle Farm by Gilbert Wilcox to M. Curtis, X. and Y. joining to receive the purchase money.*

Feb. 1, 1928. Will of M. Curtis purporting to appoint his infant son John Curtis executor.

April 3, 1928. Death of M. Curtis.

Sept. 5, 1928. *Letters of administration with the will annexed granted to M. and N.*

[NOTE.—Administration will either be granted to a trust Corporation or to not less than two individuals, if there are Settled Land Act trustees; it will, as respects the settled land, be granted to them.]

V.

SPECIMEN NO. 5.

PRECEDENT V.

STATUTORY SPECIMEN No. 5.

OF THE TITLE OF GEORGE SMITH TO HOUSES IN JOHN STREET.

RELATING TO LEASEHOLD PROPERTY.

Lease by Charles Robinson to Henry Chubb, of 10 to 16 (even numbers) John Street, in the city of X., for 99 years from date at a yearly rent of £5 for each house.

March 25, 1921.

March 26, 1921. *First Mortgage (by subdemise) by Henry Chubb to A. for the residue of the term less 3 days for securing £3,000 and interest. Declaration by Henry Chubb that he holds the head term in trust for A. subject to redemption.*

Same date. *Second Mortgage (by subdemise) to B. for the residue of the term less 2 days for securing £1,000 and interest. Declaration by Henry Chubb that (subject to the First Mortgage) he holds the head term in trust for B. subject to redemption.*

Same date. Third Mortgage (by subdemise) to *C.* for residue of term less 1 day for securing £500 and interest.

Dec. 24, 1924. *Transfer of First Mortgage by A. to T. in trust for Henry Chubb, who pays off the First Mortgage debt.*

Jan. 1, 1926. The Law of Property Act, 1925, comes into operation.

[NOTE.—It extinguishes the first mortgage term, because Henry Chubb was not entitled to keep it alive to the prejudice of his mesne incumbrancers.]

Order of Court directing Henry Chubb to hand over the Lease, First Mortgage, and Transfer of that Mortgage to *B.* July 1, 1926.

Assignment on sale by B., under his power, to George Smith. July 20, 1926.

[NOTE.—This conveys the head term created by the Lease and extinguishes all the mortgage terms. The head term may, if desired, be conveyed in the name of Henry Chubb.]

ACKNOWLEDGMENTS (Production of Deeds).

General Remarks.

Right of purchaser to documents of title.

As a general rule, the purchaser is, upon completion of the sale, entitled to all the documents of title, however ancient, which are in the possession or power of the vendor: see *Re Duthy and Jesson*, [1898] 1 Ch. 419.

Where, however, (a) the vendor retains any part of the land to which the documents relate, or (b) the document consists of a trust instrument or other instrument creating a trust which is still subsisting, or an instrument relating to the appointment or discharge of a trustee of a subsisting trust, he may retain such documents: L. P. Act, 1925, sect. 45, sub-sect. (9) (set out under Contracts, &c., General Remarks).

Production and safe custody of documents.

When all the documents of title are not handed to the purchaser, some agreement as to their production and safe custody becomes necessary, and this was formerly met by a covenant for production, but this covenant is now superseded in most cases by an acknowledgment and undertaking under sect. 64 of the L. P. Act, 1925 (replacing C. Act, 1881, sect. 9). In making use of the statute, it must be borne in mind that its provisions only apply where the person giving the acknowledgment and undertaking retains possession of the documents. It is important, therefore, to ascertain who retains possession, and to be satisfied that such person is the person lawfully entitled to their custody.

Where the statutory provisions are not applicable a covenant for production or some agreement to the same effect will be required.

The section is as follows:—

L. P. Act, 1925, s. 64.

64.—(1) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

(2) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

(3) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

(4) The obligations imposed under this section by an acknowledgment are—

(i) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any person by him authorised in writing; and

(ii) An obligation to produce the documents or any of them at any trial, hearing, or examination in any court, or in the execution of any commission, or elsewhere in the United Kingdom (*a*), on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

(iii) An obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(8) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncancelled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10) Any person claiming to be entitled to the benefit of such an

---

(*a*) "United Kingdom" means Great Britain and Northern Ireland (sect. 205, sub-sect. (1) (xxx)).

undertaking may apply to the court to assess damages for any loss or destruction of, or injury to, the documents or any of them, and the court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

(12) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents, as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14) This section applies to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the thirty-first day of December, eighteen hundred and eighty-one.

Right to take copies.

It may be noticed that the section does not expressly give to the person entitled to the benefit of an acknowledgment himself the right to "take" copies of documents produced under it, but only to "delivery" of copies (sect. 64, sub-sect. (4) (iii)). Whether the provision that the performance of the duty imposed is to be at the expense of the person requesting such performance (sect. 64, sub-sect. (5)) precludes such person from taking a copy himself is not quite clear. It is suggested that the obligations (a) to produce and (b) deliver copies are distinct, and that the right to production primarily includes a right to take copies or extracts. The point, however, is a small one, and hardly likely to be contested. (Compare *Re Balaghât Gold Mining Co.*, [1901] 2 K. B. 665, with *Ormerod, &c., Co.* v. *St. George's Ironworks*, [1905] 1 Ch. 505.)

Documents retained by third parties.

Difficulty sometimes arises under this section where the deeds in question are in the hands of third parties who will not, and cannot be compelled to, give an acknowledgment with respect to them. In such a case an acknowledgment given by a vendor not having possession of the deeds would not operate under the statute, and it is thought that a covenant in the old form should be given, or an agreement to give a statutory acknowledgment on obtaining possession of the documents. Thus, where on a sale the documents of title relate to other land retained by the vendor as well as to the land sold, and the whole land is mortgaged and the documents are retained by the mortgagee, it is a question as to what is the proper procedure for giving to the purchaser a right to production which he can enforce.

The mortgagor, by sect. 11 of the C. Act, 1881, was given the right to inspect the documents relating to the mortgaged property. This provision is re-enacted by sub-sect. (1) of sect. 96 of the L. P. Act, 1925, and a new provision is added which exempts the mortgagee in certain cases, when the mortgage is paid off, from liability if he hands the documents to the wrong person. The section is as follows :—

L. P. Act, 1925, s. 96.

96.—(1) A mortgagor, as long as his right to redeem subsists, shall be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

This section applies to mortgages made after the thirty-first day of December, eighteen hundred and eighty-one, and takes effect notwithstanding any stipulation to the contrary.

(2) A mortgagee, whose mortgage is surrendered or otherwise extinguished, shall not be liable on account of delivering documents of title in his possession to the person not having the best right thereto, unless he has notice of the right or claim of a person having a better right, whether by virtue of a right to require a surrender or re-conveyance or otherwise.

As to the meaning of "mortgagor," see sect. 205, sub-sect. (1) (xvi) (which corresponds with the definition in sect. 2 (vi) of the C. Act, 1881). It is not clear whether a purchaser who has paid the mortgage debt out of the purchase money is a "mortgagor" within this definition, or whether the property sold and released from the mortgage is still part of "the mortgaged property" within this section, and whether, therefore, the purchaser can claim the rights of the mortgagor. If not, then the purchaser would appear to have no right to production—at least, so long as the rest of the mortgage debt continues unpaid. It is therefore usual to ask the mortgagee to give the statutory acknowledgment, but without any undertaking; and, if he does so, the purchaser is often, in practice, satisfied with this, without requiring any covenant for production from the mortgagor. This practice does not seem to meet the difficulty when the mortgage is paid off and the documents are delivered by the mortgagee to the person entitled (see and consider sub-sect. (2), above); or, again, the mortgagee may refuse to give any acknowledgment, in which case the purchaser might have no remedy against the mortgagee, whatever rights he might have through the mortgagor. In the absence of further elucidation of these doubts by statute or judicial decision, the safer course appears to be to require a covenant for production from the mortgagor as well, if possible, as an acknowledgment from the mortgagee.

Trustees and mortgagees give acknowledgment only.

Trustees under the existing practice do not give the undertaking for safe custody, but the acknowledgment only, although it is usual to insert an express condition to that effect in the contract or conditions of sale. A similar practice prevails as regards mortgagees, although the case of a mortgagee differs in so far as, unless he is a party to the contract for sale (*e.g.*, selling under his power), it is a question whether he can be compelled even to give an acknowledgment.

Purchaser when entitled to both acknowledgment and undertaking.

Apart from these exceptions, a purchaser is generally entitled either to the statutory acknowledgment and undertaking or to a covenant for production and safe custody as to all documents in the possession or power of the vendor which are material to the title as prescribed by law or limited by the contract, and which are retained by him : see *Cooper* v. *Emery* (1844), 1 Ph. 388. This right is independent of the equitable right to production : *Barclay* v. *Raine* (1823), 1 Sim. & St. 449. See Wms. V. & P. (1922), 645, 646, and *Re Jenkins and Commercial Electric Theatre Co.* (1917), W. N. 49. But the inability of a vendor to furnish a purchaser with an acknowledgment of his right to production and delivery of copies, or with a covenant to produce and furnish copies of documents of title, is not an objection to title if the purchaser will, on the completion of the contract, have an equitable right to the production of such documents : L. P. Act, 1925, sect. 45, sub-sect. (7).

Whether tenant for life should give undertaking.

Under the former practice a tenant for life selling settled land under his statutory power usually gave the undertaking for safe custody as well as acknowledging the right to production of documents. In future, it is a question whether the person who by a vesting instrument holds the settled land in trust, and who, as distinguished from the trustees acting as statutory owners, is called by the S. L. Act, 1925, " the tenant for life," should only give the acknowledgment. Even under the previous law his position was a fiduciary one (see S. L. Act, 1882, sect. 53, now replaced by S. L. Act, 1925, sect. 107, sub-sect. (1)), and the reason for his giving the undertaking was not clear. Now the fee simple is vested in him upon trust, and, in the case of settlements made after 1925, his beneficial interest is generally not disclosed to a purchaser of the legal estate. It is doubtful, therefore, whether he should give the undertaking.

Cost of acknowledgment, &c.

Such acknowledgments or covenants for production and undertakings or covenants for safe custody as the purchaser may require are to be at his expense, and the vendor has to bear the expense of perusal and execution by himself and necessary parties other than the purchaser : see L. P. Act, 1925, sect. 45, sub-sect. (8) (set out under CONTRACTS, &c., General Remarks).

As to the costs of production and delivery of copies under the acknowledgment, see sect. 64, sub-sect. (5), set out above.

Stamp duty on acknowledgment, &c.

No additional stamp is payable on a conveyance on sale where an acknowledgment alone, or an acknowledgment with an undertaking, or, it would seem, a covenant for production, is inserted in the deed, for such additions are incidental to the conveyance : Sug. V. & P. (1862), 571; Wms. V. & P. (1922), 661. But where taken by a separate document a sixpenny stamp, if under hand only, as on an agreement, or ten shillings if by deed, is payable in respect of an acknowledgment and undertaking, and in the case of a covenant for production the duty is the same as on the conveyance (or mortgage), if such duty does not exceed ten shillings, and in any other case ten shillings : see Stamp Act, 1891, Sch. " Covenant "; Dart. V. & P. (1905), 577, note.

PRECEDENTS.

I.

PRECEDENT I.

ACKNOWLEDGMENT AND UNDERTAKING IN A CONVEYANCE.

ACKNOWLEDGMENT *and* UNDERTAKING *as to Production and Custody of Deeds in a Conveyance on Sale.*

THE vendor[s] doth [do] hereby acknowledge the right of the purchaser to production and to delivery of copies of the documents mentioned in the Schedule hereto [and doth [do] hereby undertake the safe custody thereof (*a*)].

SCHEDULE—*Documents retained by the vendor.*

II.

PRECEDENT II.

BY BENEFICIAL OR FIDUCIARY OWNER.

ACKNOWLEDGMENT *and* UNDERTAKING *as a Separate Document* (*b*).

AN AGREEMENT, made, &c., BETWEEN A., of, &c. (herein called " the vendor "), of the one part, and B., of, &c. (herein called " the purchaser "), of the other part. WHEREAS, by a Conveyance (herein called " the conveyance ") bearing even date with, but executed before, this Agreement, and made between

Recital of conveyance of even date;

(*a*) Omit the undertaking if the vendor is a trustee or mortgagee, and as to a tenant for life of settled land, see General Remarks, above. The word " for " after " undertake " is omitted as being not only superfluous but questionable English, although often inserted in practice (*e.g.*, see Statutory Form of Compensation Agreement, set out under CONTRACTS as Precedent VII.).

(*b*) It is not necessary that such acknowledgment and undertaking should be under seal. If not under seal, it should be stamped as an agreement. See General Remarks, above.

PRECEDENT II.

BY BENEFICIAL OR FIDUCIARY OWNER.

the vendor, of the one part, and the purchaser, of the other part, certain hereditaments therein described have been assured by way of sale to the purchaser in fee simple. AND WHEREAS the documents hereinafter mentioned relate as well to the hereditaments comprised in the conveyance as to other hereditaments belonging to the vendor, and it has been agreed that the vendor should retain possession of the said documents and should give the acknowledgment [and undertaking] (*c*) hereinafter contained. Now the vendor doth hereby acknowledge the right of the purchaser to production and to delivery of copies of the documents mentioned in the Schedule hereto [and doth hereby undertake the safe custody thereof]. AS WITNESS, &c.

—that documents relate to other land besides that sold.

Acknowledgment [and undertaking] by vendor.

SCHEDULE—*Documents retained by vendor.*

III.

PRECEDENT III.

AGREEMENT AS TO TITLE DEEDS OF TWO ESTATES, MORTGAGED TO DIFFERENT PERSONS.

AGREEMENT *for the* DEPOSIT *of* DEEDS *relating to* TWO *Estates Mortgaged to* DIFFERENT *Mortgagees* (*d*).

THIS AGREEMENT, made, &c., BETWEEN A., of, &c. [*mortgagor*] (herein called "the owner"), of the first part, B. of, &c. [*mortgagee of the W. Estate*] (herein called "the W. mortgagee"), of the second part, and C., of, &c. [*mortgagee of the S. Estate*] (herein called "the S. mortgagee"), of the third part. WHEREAS, by a mortgage dated the —— day of ——, and made between [*parties*], certain hereditaments in the county of W. (herein called "the W. Estate") were mortgaged by the owner to the W. mortgagee, for securing the sum of £——, and interest. AND WHEREAS the documents mentioned in the Schedule hereto relate to the title of the W. Estate, and were delivered to the W. mortgagee, and have been deposited by him with —— Bank, Limited (herein called "the Bank"). AND WHEREAS, by a mortgage bearing even date with, but executed before, these presents, and made between [*parties*], certain hereditaments in the county of S. (herein called "the S. Estate") have been mortgaged by the owner to the S. mortgagee, for securing the sum of £——, and interest. AND WHEREAS, the said documents also relate to the title of the S. Estate. AND WHEREAS, on the treaty for the mortgage to the S. mortgagee, it was agreed that the said parties hereto should enter into the agreements hereinafter contained. NOW THIS

Recital of mortgage of W. Estate;

—of delivery of documents to mortgagee, and deposit at bank;

—of mortgage of S. Estate;

—that documents of W. Estate also relate to S. Estate.

(*c*) The undertaking should be omitted where the vendor is a trustee or mortgagee. See General Remarks, above.

(*d*) As framed, this agreement is intended to be executed as a deed, and will therefore bear a ten-shilling stamp.

PRECEDENT III.

AGREEMENT AS TO TITLE DEEDS OF TWO ESTATES, MORTGAGED TO DIFFERENT PERSONS.

DEED WITNESSETH, and in consideration of the premises it is hereby agreed (1) that so long as any money shall remain on the said mortgage of the W. Estate, and also on the said mortgage of the S. Estate, the said documents shall remain deposited in the banking-house of the Bank, on the account and for the use of the W. mortgagee and the S. mortgagee and the persons respectively deriving title under them; (2) that the W. mortgagee and persons deriving title under him, and his and their solicitors and agents, and the S. mortgagee and persons deriving title under him, and his and their solicitors and agents, shall at all times have access to the said documents, to examine, copy, or abstract the same, or make extracts therefrom, and for all other reasonable purposes; (3) that the said documents shall be produced and used on all occasions on which they may be reasonably required, for the support or manifestation of the title of the W. mortgagee, and persons deriving title under him, to the W. Estate, or any part thereof, and of the S. mortgagee, and persons deriving title under him, to the S. Estate, or any part thereof; (4) that when and if the mortgage on either of the said W. and S. Estates shall be paid off, while any money remains on the mortgage of the other of the said Estates, the said documents shall be delivered to that mortgagee, whose mortgage-money, or some part of whose mortgage-money, shall still remain unpaid, or the person for the time being entitled to the benefit of such mortgage (*e*). IN WITNESS, &c.

Agreement that documents shall remain deposited, and that both mortgagees shall have access;

—and that documents shall be produced to either mortgagee;

—and that if either mortgagee is paid off, the documents shall be given to the other mortgagee.

SCHEDULE—*Documents relating to both Estates.*

IV.

COVENANT *for* PRODUCTION *of* DEEDS *by* TRUSTEES *or* MORTGAGEES.

PRECEDENT IV.

COVENANT FOR PRODUCTION OF DEEDS BY TRUSTEES OR MORTGAGEES.

THIS COVENANT, made the —— day of ——, BETWEEN A., of, &c., and B., of, &c. (herein called "the covenantors") of the one part, and C., of, &c. (herein called "the purchaser") of the other part. WHEREAS, by a conveyance on sale (herein called "the conveyance") dated, &c., and made, &c., divers hereditaments in the Parish of ——, in the County of ——, were assured to the purchaser in fee simple. AND WHEREAS the documents mentioned in the Schedule hereto relate as well to

Recital of conveyance.

—that documents in possession of covenantors.

(*e*) As to the right of a mortgagor to inspection of deeds, see sect. 96, sub-sect. (1) of the L. P. Act, 1925 (set out above, p. 21). There is no implied covenant on the part of a mortgagee to take reasonable care of the title deeds during the continuance of his security: *Gilligan* v. *National Bank*, [1901] 2 I. R. 513.

PRECEDENT IV.

COVENANT FOR PRODUCTION OF DEEDS BY TRUSTEES OR MORTGAGEES.

the hereditaments comprised in the conveyance as to other hereditaments and are retained by the covenantors, and it was a condition of the sale that the said documents should remain in their custody and that they should enter into the covenant hereinafter contained. NOW THIS DEED WITNESSETH, that in consideration of the premises the covenantors and each of them so far as relates to their and his own acts and the acts of their respective personal representatives, and so as to bind them and each of them and their respective personal representatives personally only while having the actual custody of the documents hereby covenanted to be produced and so far as practicable so as to bind such documents into whosesoever hands the same may come and not so as to bind them or either of them or their respective personal representatives or to incur any liability in relation thereto further or otherwise, Do and each of them Doth hereby jointly and severally covenant with the purchaser that they, the covenantors respectively, and their respective personal representatives and assigns, unless prevented by insuperable accident, WILL upon every reasonable request by and at the cost of the purchaser, his personal representatives and assigns, or any person having or lawfully or equitably claiming through him or them or any of them any estate or interest at law or in equity in the hereditaments comprised in the conveyance or any part thereof produce or cause to be produced, at such times, in such places and to such persons as he or they shall require, all or any of the documents mentioned in the Schedule hereto for the proof, defence and support of the estate, title and possession of the purchaser, his personal representatives and assigns and any such other person as aforesaid. AND WILL at the like request and cost make and furnish to him or them such true copies attested or unattested of or such abstracts of or extracts from all or any of the same documents as he or they may require; AND WILL in the meantime keep the same documents safe, whole, uncancelled and undefaced. IN WITNESS, &c.

Limitation of liability of covenantors.

Covenant

—to produce,

—to make and furnish copies

—for safe custody.

SCHEDULE—*Documents in custody of covenantors.*

V.

Covenant *for* Production *of* Deeds *by a* Mortgagor *where the Mortgagee retains them* (*f*).

THE mortgagor for himself and so as to bind any person deriving title under him or entitled to redemption Doth hereby covenant with the purchaser that if and when the documents mentioned in the Schedule hereto shall come into the possession of the mortgagor or of any such person, he or any such person (unless prevented by insuperable accident) Will upon every reasonable request [*continue as in Precedent IV. to the end*], [*or* Will forthwith notify the purchaser or other person for the time being entitled through him to production of the said documents and at the request and cost of the purchaser or such person, execute and deliver to him or such person a statutory acknowledgment and undertaking in accordance with the provisions of the Law of Property Act, 1925, or any amending Act; And in the meantime will keep the same safe, whole, uncancelled and undefaced].

SCHEDULE—*Documents in custody of mortgagee.*

(*f*) This Precedent is intended to meet the case where a mortgagor sells part of land which is mortgaged, and the documents of title are retained by the mortgagee (see General Remarks, above). As framed, it is intended to be a clause in the conveyance on sale, but if a separate covenant, appropriate recitals would be required (compare Precedent IV.).

APPOINTMENTS OF TRUSTEES.

General Remarks.

Appointment of new trustees generally.

The appointment, out of Court, of new trustees will generally be effected in exercise of the statutory power conferred by sect. 36 of the T. Act, 1925 (replacing sect. 10 of the T. Act, 1893), but this power only applies if and as far as a contrary intention is not expressed in the instrument creating the trust and subject to the terms of that instrument (T. Act, 1925, sect. 69, sub-sect. (2)), so that the power, if any, conferred by such instrument should be compared with the statutory power and should, as a rule, be recited or referred to in the appointment.

Devolution of powers or trusts.

"Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being": T. Act, 1925, sect. 18, sub-sect. (1), replacing T. Act, 1893, sect. 22. See *Re Harrison*, [1923] 1 Ch. 182, as to survivorship of powers.

Personal representatives may act until appointment

Until the appointment of new trustees, the personal representatives (but not including an executor who has renounced or not proved) of a sole or last surviving or continuing trustee may exercise or perform any power or trust which was given to, or capable of being exercised by, such sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust. This power is, however, subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation: see T. Act, 1925, sect. 18, sub-sects. (2), (3), (4).

and appoint trustees of infant's property.

Moreover, where an infant is, under a will or an intestacy, absolutely entitled to any property and there are no trustees, the personal representatives may appoint trustees of such property: see A. E. Act, 1925, sect. 42.

Power to appoint new or additional trustees.

The power of appointing new or additional trustees is conferred by sect. 36 of the T. Act, 1925, which is as follows:—

T. Act, 1925, s. 36.

> **36.**—(1) Where a trustee (*a*), either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the United Kingdom (*b*) for more than twelve months (*c*), or

(*a*) See T. Act, 1925, sect. 68, sub-sect. (17).

(*b*) See sect. 68, sub-sect. (20).

(*c*) From *Re Coates to Parsons* (1886), 34 Ch. D. 370, it would appear that if it is known where the trustee who is abroad is, and he is willing to act

desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit (*d*) to act therein, or is incapable (*e*) of acting therein, or is an infant (*f*), then, subject to the restrictions imposed by this Act on the number of trustees (*g*)—

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust (*h*); or

(b) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee (*i*);

may, by writing, appoint one or more other persons (whether or not being the persons exercising the power (*k*)) to be a trustee or trustees in the place of the trustee so deceased, remaining out of the United Kingdom, desiring to be discharged, refusing, or being unfit or being incapable, or being an infant, as aforesaid (*l*).

---

in the exercise of the provisions of the section, he ought to join in the appointment of the new trustee. As to the meaning of "abroad," see *Re Stamford*, [1896] 1 Ch. 288; *Re Walker*, [1901] 1 Ch. 259, where the trustee had remained abroad for twelve months except during one week when he stayed in London, and an appointment of a new trustee purporting to be made under this section was held invalid.

(*d*) See as to bankruptcy of a trustee, *Re Adams* (1879), 12 Ch. D. 634.

(*e*) Lunacy or unsoundness of mind is incapacity within the meaning of this section: see *Re Blake* (1887), W. N. 173; and see now sub-sect. (9) of this section. A married woman is not "incapable" of acting in a trust.

(*f*) This is new. Infancy was held not to be incapacity: *Re Tallatire* (1885), W. N. 191.

(*g*) See T. Act, 1925, sect. 34.

(*h*) If several persons nominated for the purposes of this section cannot agree in the selection of a new trustee, the power is exercisable by the person or persons to whom by the section the power is given in the event of there being no nominated persons able and willing to act: *Re Sheppard* (1888), W. N. 234. See also *Cradock* v. *Witham* (1895), W. N. 75, where the person having the right of nomination could not be found; and *Re Wheeler*, [1896] 1 Ch. 315 (where the trust instrument empowered persons to appoint new trustees in the event of a trustee becoming incapable, and a trustee became unfit but not incapable), reluctantly followed in *Re Sichel*, [1916] 1 Ch. 358; *Re Routledge*, [1909] 1 Ch. 280, where the personal representatives of the last surviving trustee had acted and were displaced by an appointment under this section.

(*i*) The executor of a deceased sole trustee is the personal representative of a "continuing trustee": *Re Shafto* (1885), 29 Ch. D. 247 (see also sub-sect. (8), set out below). And as to who are "personal representatives" within the section, see *Re Parker*, [1894] 1 Ch. 707, where a last surviving trustee had appointed both general and special executors; *Re Boucherett*, [1908] 1 Ch. 180, where the appointment was made by the sole proving executor, there being two other executors living who had neither proved nor renounced probate. See also sub-sects. (4) and (5), set out below.

(*k*) The words in brackets are new. It was held that the donee of the power could not appoint himself: *Re Sampson*, [1906] 1 Ch. 435. As to his appointing his solicitor, see *Re Stamford*, [1896] 1 Ch. 288; *Re Spencer's S. E.*, [1903] 1 Ch. 75; *Re Cotter*, [1915] 1 Ch. 307.

(*l*) The power cannot be exercised by will: *Re Parker*, [1894] 1 Ch. 707. And it is not exercisable by the personal representatives of a sole trustee of a will dying in the testator's lifetime: see *Nicholson* v. *Field*, [1893] 2 Ch. 511.

Removal of trustee.

(2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and the provisions of this section shall apply accordingly, but subject to the restrictions imposed by this Act on the number of trustees (*m*).

Corporation as trustee.

(3) Where a corporation being a trustee is or has been dissolved, either before or after the commencement of this Act, then, for the purposes of this section and of any enactment replaced thereby, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation (*n*).

Power of executors to appoint.

(4) The power of appointment given by subsection (1) of this section or any similar previous enactment to the personal representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved (*o*).

(5) But a sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had power, at any time before renouncing probate, to exercise the power of appointment given by this section, or by any similar previous enactment, if willing to act for that purpose and without thereby accepting the office of executor (*o*).

(6) Where a sole trustee, other than a trust corporation, is or has been originally appointed to act in a trust, or where, in the case of any trust, there are not more than three trustees (none of them being a trust corporation) either original or substituted and whether appointed by the court or otherwise, then and in any such case—

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or

(b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being;

may, by writing, appoint another person or other persons to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee, unless the instrument, if any, creating the trust, or any statutory enactment provides to

---

The person in whom the power is vested is under no obligation to exercise it (*Re Knight* (1884), 26 Ch. D. 82); but if he desires to exercise the power the Court has no jurisdiction to take it from him by itself appointing new trustees: *Re Higginbottom*, [1892] 3 Ch. 132.

(*m*) *E.g.*, where in an equitable mortgage the mortgagee has power to remove the owner from his trusteeship of the legal estate. See *London and County Banking Co.* v. *Goddard*, [1897] 1 Ch. 642.

(*n*) Where a corporation holds trust property in joint tenancy with an individual, and is dissolved, the property devolves on the other joint tenant (Bodies Corporate (Joint Tenancy) Act, 1899, sect. 1, sub-sect. (2)). In this case the continuing trustee can appoint new trustees.

(*o*) See notes to sub-sect. (1), and compare T. Act, 1925, sect. 18, sub-sects. (2) and (3) as to devolution of powers or trusts; referred to at p. 28.

the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment (*p*).

(7) Every new trustee appointed under this section as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(8) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section (*q*).

(9) Where a lunatic or defective, being a trustee, is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by the continuing trustees or trustee, under this section, unless leave has been given by the Judge or Master in Lunacy to make the appointment (*r*).

Supplemental provisions as to appointments of trustees.

Power to increase the number of trustees, to appoint separate trustees of separate parts of the trust property, and other provisions, are contained in sect. 37 of the T. Act, 1925, which is as follows :—

T. Act, 1925, s. 37.

37.—(1) On the appointment of a trustee for the whole or any part of trust property—

(a) the number of trustees may, subject to the restrictions imposed by this Act on the number of trustees, be increased (*s*); and

(b) a separate set of trustees, not exceeding four, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the

---

(*p*) See T. Act, 1925, s. 37, sub-sect. (1) (a). As to the meaning of "trust corporation," see p. 32, note (*u*).

(*q*) If a retiring trustee is not willing to act, the remaining trustee is a "continuing trustee" (see *Re Coates to Parsons* (1886), 34 Ch. D. 370), but the retiring trustees may join to appoint with the other trustees, or if all retire may appoint new trustees. As to the procedure where a trustee desires to retire, and it is not desired to appoint new trustees, see sect. 39 and sect. 40, sub-sect. (2), set out below.

(*r*) This sub-section is new, but does not appear to affect the power of the other trustees to appoint out of Court a new trustee in the place of a lunatic or defective on the ground that the trustee is "incapable" (see sub-sect. (1), above), if he has no beneficial interest. It may, however, be advisable, even in that case, to apply to the Court : see *Re Blake* (1887), W. N. 173.

"Lunatic" includes a lunatic whether so found or not, and "defective" means every person affected by the provisions of sect. 116 of the Lunacy Act, 1890, as extended by sect. 64 of the Mental Deficiency Act, 1913, and for whose benefit a receiver has been appointed : see S. L. Act, 1925, sect. 117, sub-sect. (1) (xiii), and T. Act, 1925, sect. 68, sub-sect. (15).

(*s*) As to the limitation on the number of trustees in the case of trusts of land, see sect. 34, set out below. Previously the power to increase the original number of trustees only arose when a vacancy was being filled : *Re Gregson* (1887), 34 Ch. D. 209; but see now sect. 36, sub-sect. (6), set out above.

trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed, then, save as hereinafter provided, one separate trustee may be so appointed (*t*); and

(c) it shall not be obligatory, save as hereinafter provided, to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but, except where only one trustee was originally appointed, and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee shall not be discharged from his trust unless there will be either a trust corporation or at least two individuals to act as trustees to perform the trust (*u*); and

(d) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.

(2) Nothing in this Act shall authorise the appointment of a sole trustee, not being a trust corporation, where the trustee, when appointed, would not be able to give valid receipts for all capital money arising under the trust.

Retirement of trustee without a new appointment (*x*).

Provisions are contained in sect. 39 of the T. Act, 1925, for the retirement of a trustee who desires to be discharged where no new trustee is to be appointed in his place. The section is as follows :—

T. Act, 1925, s. 39.

39.—(1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, then, if such trustee as aforesaid by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees,

---

(*t*) In *Re Hetherington* (1887), 34 Ch. D. 211, trusts were held to be "distinct" which might in a certain event coalesce.

(*u*) It has been held that, in the case of the appointment of the Public Trustee under the statutory power, he may be appointed as sole trustee, notwithstanding that the instrument provides that the number of trustees shall not be less than three : see Public Trustee Act, 1906, sect. 5, and *Re Moxon*, [1916] 2 Ch. 595, following *Re Leslie*, [1911] 1 Ch. 611 (appointment by Court). "Trust corporation" is defined in sect. 68, sub-sect. (18).

The words "either a trust corporation or" are new, but do not appear to meet the case of a corporation being appointed a full trustee (as opposed to merely a "custodian" trustee). This difficulty may perhaps be met by the corporation appointing one of its officers to act jointly with itself, but as the word "individuals" was substituted for "trustees," this is not quite clear, and it may be necessary that the corporation should act through two of its officers (compare T. Act, 1893, sect. 10, sub-sect. (2) (c)). As to the power of a corporation to act as trustee, see *Re Thompson*, [1905] 1 Ch. 229.

(*x*) Under this section, a reduction in the number of trustees of a continuing trust may be effected. As to the vesting of the trust property, see sect. 40, sub-sect. (2), set out below.

by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

Vesting of trust property on new appointment (*y*).

The provisions for vesting the trust property on an appointment of new trustees by either an express or *implied* declaration are contained in sect. 40 of the T. Act, 1925, which is as follows :—

T. Act, 1925, s. 40.

40.—(1) Where by a deed a new trustee is appointed to perform any trust, then—

(a) if the deed contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate interest or right to which the declaration relates; and

(b) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates interests and rights with respect to which a declaration could have been made (*z*).

(2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, then—

(a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any

---

Stamp duty.

(*y*) An appointment of new trustees and the vesting of the property are distinct matters within the Stamp Act, 1891, so that an express vesting declaration would, it seems, require a separate stamp : see *Hadgett* v. *Commrs. of Inland Revenue*, 3 Ex. Div. 46. Whether, if there is no express declaration, but the trust property is specifically mentioned and includes property which would be vested by implication under paragraphs (b) of sub-sects. (1) and (2), the deed would be liable to a further stamp is a question which may require adjudication. The duty on a conveyance or transfer made for effectuating the appointment of a new trustee, or the retirement of a trustee without a new one being appointed, is limited to 10s. See Stamp Act, 1891, sect. 62, amended by the Finance Act, 1902, sect. 9, and also the Finance (1909-10) Act, 1910, sect. 74, sub-sect. (6).

It should be noted that a "deed" is essential in order that the vesting declaration, whether express or implied by the statute, can take effect.

Implied vesting.

(*z*) Paragraphs (b) of sub-sect. (1) and sub-sect. (2) are new. This implied vesting of the trust property (which is only applicable to deeds made after 1925) may be compared with the automatic vesting of trust property in trustees of religious bodies under the Trustees Appointment Acts, 1850 and 1890, and other similar enactments. It might have been simpler if some such enactment had been substituted for the alternative express or implied declaration.

conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates; and

(b) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interests and rights with respect to which a declaration could have been made (*z*).

(3) An express vesting declaration, whether made before or after the commencement of this Act, shall, notwithstanding that the estate, interest or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2) of this section, as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons (*a*).

(4) This section does not extend—

(a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock (*b*);

(b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any statute or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture (*c*);

(c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under an Act of Parliament.

In this subsection "lease" includes an underlease and an agreement for a lease or underlease.

(5) For purposes of registration of the deed in any registry, the person or persons making the declaration expressly or impliedly, shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(6) This section applies to deeds of appointment or discharge

---

(*z*) See note (*z*), p. 33.

(*a*) This sub-section is new, and appears to modify the form of declaration required by sub-sect. (1) (a) and sub-sect. (2) (a) (which replace T. Act, 1893, sect. 12, sub-sects. (1) and (2), and C. Act, 1881, sect. 34), or, at least, to render unimportant its exact wording, so long as the other statutory requirements are complied with; that is to say, there must be (1) a deed; (2) the declaration must be contained in the deed (a) by which the new trustee is appointed or (b) by which the retiring trustee is discharged. Where, however, an express declaration is inserted, it will still be the better practice to follow the words in sub-sect. (1) (a) or sub-sect. (2) (a) as closely as possible.

(*b*) The last part ("except land," &c.) of this paragraph is new.

(*c*) The whole of this paragraph is new.

executed on or after the first day of January, eighteen hundred and eighty-two.

Special provisions where trusts connected with land.

The T. Act, 1925, also contains some new provisions for trusts connected with land as to the following matters :—(1) the limitation of the number of trustees holding land (sect. 34); (2) the appointments of new trustees of a disposition of land on trust for sale and of the settlement of the proceeds (sect. 35); and (3) evidence as to a vacancy in the trust (sect. 38).

The S. L. Act, 1925, also provides (sect. 35) for the procedure on appointment of new trustees of a trust instrument for the purposes of the Act. Compare T. Act, 1925, sect. 35, sub-sect. (2).

Number of trustees of settled land or of land settled on trust for sale.

Where land is settled land within the S. L. Act, 1925, or is settled behind a trust for sale, the number of the trustees is regulated (*d*) by sect. 34 of the T. Act, 1925, which is as follows :—

T. Act, 1925, s. 34.

34.—(1) Where, at the commencement of this Act, there are more than four trustees of a settlement of land (*e*), or more than four trustees holding land on trust for sale (*f*), no new trustees shall (except where as a result of the appointment the number is reduced to four or less) be capable of being appointed until the number is reduced to less than four, and thereafter the number shall not be increased beyond four.

(2) In the case of settlements and dispositions on trust for sale of land made or coming into operation after the commencement of this Act—

(a) the number of trustees thereof shall not in any case exceed four, and where more than four persons are named as such trustees, the four first named (who are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy;

(b) the number of the trustees shall not be increased beyond four.

(3) This section only applies to settlements and dispositions of land, and the restrictions imposed on the number of trustees do not apply—

(a) in the case of land vested in trustees for charitable, ecclesiastical, or public purposes; or

(b) where the net proceeds of the sale of the land are held for like purposes; or

(c) to the trustees of a term of years absolute limited by a settle-

---

(*d*) These restrictions apply to registered land : see L. R. Act, 1925, sect. 95.

(*e*) Having regard to the definition of "settlement" in sect. 68, sub-sect. (15) of the T. Act, 1925, and in sect. 117, sub-sect. (1) (xxiv) of the S. L. Act, 1925, the restrictions would seem to apply to the "trust instrument" as well as to the "vesting deed."

(*f*) The provisions in sect. 35 of the T. Act, 1925 (set out below), would appear to indicate that the restrictions apply to the settlement of the net proceeds of the sale of the land where such settlement is by a separate instrument, as the persons who become trustees of the conveyance are to be the same persons as those who become trustees of the settlement.

ment on trusts for raising money, or of a like term created under the statutory remedies relating to annual sums charged on land.

Mode of effecting appointments where land is settled on trust for sale or is settled land.

T. Act, 1925, s. 35.

Where land is settled behind a trust for sale, or is settled land within the S. L. Act, 1925, the appointments of new trustees are regulated by the provisions of sect. 35 of the T. Act, 1925, which is as follows :—

35.—(1) Appointments of new trustees of conveyances on trust for sale on the one hand and of the settlement of the proceeds of sale on the other hand, shall, subject to any order of the court, be effected by separate instruments, but in such manner as to secure that the same persons shall become the trustees of the conveyance on trust for sale as become the trustees of the settlement of the proceeds of sale.

(2) Where new trustees of a settlement are appointed, a memorandum of the names and addresses of the persons who are for the time being the trustees thereof for the purposes of the Settled Land Act, 1925, shall be endorsed on or annexed to the last or only principal vesting instrument by or on behalf of the trustees of the settlement, and such vesting instrument shall, for that purpose, be produced by the person having the possession thereof to the trustees of the settlement when so required.

(3) Where new trustees of a conveyance on trust for sale relating to a legal estate are appointed, a memorandum of the persons who are for the time being the trustees for sale shall be endorsed on or annexed thereto by or on behalf of the trustees of the settlement of the proceeds of sale, and the conveyance shall, for that purpose, be produced by the person having the possession thereof to the last-mentioned trustees when so required.

(4) This section applies only to settlements and dispositions of land.

This section deals with the conveyance on trust for sale and the corresponding settlement of the proceeds (sub-sects. (1) and (3)), and with settlements of land, that is, with the vesting deed and the corresponding trust instrument : sub-sect. (2). The procedure on appointment in the case of settled land is more fully enacted by the S. L. Act, 1925, sect. 35 (set out below), and refers back to the T. Act, 1925, as to the requisite memorandum, so that the two sections must be read together as constituting the procedure (a rather confusing method of legislation). For form of memorandum, see DECLARATIONS, p. 219, note (*h*).

Procedure on appointment of new trustees of settled land.

S. L. Act, 1925, s. 35.

The procedure on the appointment of new trustees of settled land is also further regulated by sect. 35 of the S. L. Act, 1925, which is as follows :—

35.—(1) Whenever a new trustee for the purposes of this Act is appointed of a trust instrument or a trustee thereof for the purposes aforesaid is discharged from the trust without a new trustee being

appointed, a deed shall be executed supplemental to the last or only principal vesting instrument containing a declaration that the persons therein named, being the persons who after such appointment or discharge, as the case may be, are the trustees of the trust instrument for the purposes aforesaid, are the trustees of the settlement for those purposes; and a memorandum shall be endorsed on or annexed to the last or only principal vesting instrument in accordance with the Trustee Act, 1925.

(2) Every such deed as aforesaid shall, if the trustee was appointed or discharged by the court, be executed by such person as the court may direct, and, in any other case, shall be executed by—

(i) the person, if any, named in the principal vesting instrument as the person for the time being entitled to appoint new trustees of the settlement, or if no person is so named, or the person is dead or unable or unwilling to act, the persons who if the principal vesting instrument had been the only instrument constituting the settlement would have had power to appoint new trustees thereof;

(ii) the persons named in the deed of declaration as the trustees of the settlement; and

(iii) any trustee who is discharged as aforesaid or retires.

Evidence as to appointor or trustee being unable or unwilling to act.

(3) A statement contained in any such deed of declaration as is mentioned in this section to the effect that the person named in the principal vesting instrument as the person for the time being entitled to appoint new trustees of the settlement is unable or unwilling to act, or that a trustee has remained outside the United Kingdom for more than twelve months, or refuses or is unfit to act, or is incapable of acting, shall in favour of a purchaser of a legal estate be conclusive evidence of the matter stated.

There will thus be (1) a deed of appointment of new trustees of the trust instrument, or a deed discharging a retiring trustee; (2) a deed supplemental to the last or only principal vesting deed, declaring who are the trustees for the time being for the purposes of the Act; and (3) a memorandum endorsed in the last or only principal vesting deed stating the names and addresses of such trustees: see T. Act, 1925, sect. 35, sub-sect. (2).

Evidence as to vacancy in any trust.

As to the statement mentioned in sub-sect. (3), compare T. Act, 1925, sect. 38, set out below. This section contains a general provision as to evidence of a vacancy occurring in any trust, and is as follows :—

T. Act, 1925, s. 38.

38.—(1) A statement, contained in any instrument coming into operation after the commencement of this Act, by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the United Kingdom for more than twelve months or refuses or is unfit to act, or is incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a purchaser of a legal estate, be conclusive evidence of the matter stated.

(2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid.

It may be noted that the incapacity or unwillingness of the appointor to act is not included, as it is in sect. 35 of the S. L. Act, 1925, above.

Charitable trusts.

The Public Trustee cannot accept any trust exclusively for religious or charitable purposes (see P. T. Act, 1906, sect. 2, sub-sect. (5)), but charity trustees may appoint as custodian trustee any other body corporate which is empowered to undertake trusts : see sect. 4, sub-sect. (3); P. T. Rules, 1912, r. 30. Such an appointment does not abridge or affect the powers and duties of the Official Trustee of Charity Lands or Official Trustees of Charitable Funds within the meaning of the P. T. Act, 1906 : see sect. 2, sub-sect. (5), and *Re Cherry*, [1914] 1 Ch. 83. The "Official Trustees of Charitable Funds" are now by that name a body corporate for all purposes : see Charitable Trusts Act, 1925.

As to land held on charitable, ecclesiastical, or public trusts, see S. L. Act, 1925, sect. 29.

Infant not to be a trustee.

The appointment of an infant to be a trustee in relation to any settlement or trust shall be void, but without prejudice to the power to appoint a new trustee to fill the vacancy : L. P. Act, 1925, sect. 20.

Infant not to be a personal representative.

The appointment in a will by a testator of an infant to be an executor shall not operate to transfer any interest in the property of the deceased to the infant, or to constitute him a personal representative for any purpose unless and until probate is granted to him after he has attained full age : A. E. Act, 1925, sect. 20, sub-sect. (2).

Effect of conveyance of legal estate to infant upon trust.

A conveyance of a legal estate in land to an infant upon any trust has the effect provided by sub-sects. (4) and (5) of sect. 19 of the L. P. Act, 1925, which are as follows :—

L. P. Act, 1925, s. 19, sub-ss. (4), (5).

(4) A conveyance of a legal estate to an infant alone or to two or more persons jointly, both or all of whom are infants, on any trusts, shall operate as a declaration of trust and shall not be effectual to pass any legal estate.

(5) A conveyance of a legal estate in land to an infant jointly with one or more other persons of full age on any trusts shall operate as if the infant had not been named therein, but without prejudice to any beneficial interest in the land intended to be thereby provided for the infant.

For the provisions in cases where immediately before January 1, 1926, a legal estate in land is vested in an infant, see Part III. of the First Schedule to the L. P. Act, 1925.

PRECEDENTS (*g*).

I.

APPOINTMENT (*by Indorsement*) *by* HUSBAND *and* WIFE *of* NEW TRUSTEES *of a* MARRIAGE SETTLEMENT *of a sum of* STOCK (*h*).

PRECEDENT I.

OF SETTLEMENT BY INDORSEMENT.

THIS APPOINTMENT, made, &c., BETWEEN the within-named A. B. and C. B., his wife, formerly the within-named C. D., spinster [*husband and wife, donees of the power*] (herein called "the appointors"), of the first part, the within-named G. H. (herein called "the retiring trustee"), of the second part, and I. K., of, &c., and L. M., of, &c. (herein called "the new trustees"), of the third part. WHEREAS the within-named E. F. is dead, and the retiring trustee desires to be discharged from the trusts of the within-written deed, and the appointors desire to appoint the new trustees to be trustees of the within-written deed in the place of the said E. F. and the retiring trustee. AND WHEREAS the within-mentioned sum of £—— Two-and-a-half per Cent. Consolidated Stock is intended to be transferred into the names of the new trustees. NOW THIS DEED WITNESSETH, that the appointors, in exercise of the power conferred upon them by the Trustee Act, 1925, as the persons nominated for the purpose by the within-written deed, and of all other powers (*i*), do hereby appoint the new trustees to be trustees of the within-written deed in the place of the said E. F. and the retiring trustee. [AND IT IS HEREBY DECLARED, that the new

Recital of death of one trustee, and of another desiring to be discharged;

—of intention to transfer consols.

Appointment of new trustees.

[Declaration of trust (*k*).]

(*g*) The appointments of new trustees, in the following Precedents, are made in exercise of the statutory power conferred by the T. Act, 1925, sect. 36. Appointments of trustees under instruments containing the full power to appoint trustees formerly given would purport to be made in exercise of such power, which, where the appointment is by indorsement, should be referred to thus: "In exercise of the power conferred on them by the within-written Deed," but where by a separate deed, should be recited and referred to thus: "In exercise of the power so conferred on them by the settlement as aforesaid."

(*h*) In the settlement here referred to there were only two original trustees.

(*i*) It is conceived that, whether the instrument of which a trustee is appointed was or was not executed before 1926, the appointment should (unless such instrument contained the full power to appoint trustees formerly usual) be framed as in this Precedent, so as to take effect under the power given by the T. Act, 1925. But the general words referring to other powers (if any) should not be omitted where the instrument was executed before 1926.

(*k*) A declaration of this kind is not necessary, and is generally omitted. Whether or not such declaration is inserted, it is advisable that the new trustees should execute the deed, if only to testify their willingness to act. That such declaration and execution may create a specialty debt, see *Richardson* v. *Jenkins* (1853), 1 Dr. 477.

PRECEDENT I.

OF SETTLEMENT BY INDORSEMENT.

trustees and the survivor of them and the personal representatives of such survivor shall hold the said sum of £—— Two-and-a-half per Cent. Consolidated Stock when so transferred as aforesaid, UPON THE TRUSTS, and subject to the powers and provisions applicable thereto, by virtue of the within-written deed (*l*).] IN WITNESS, &c.

II.

PRECEDENT II.

OF ONE TRUSTEE OF SETTLEMENT BY SUPPLEMENTAL DEED.

APPOINTMENT (*by* SUPPLEMENTAL DEED) *by* HUSBAND AND WIFE *of a* NEW TRUSTEE *in place of a deceased Trustee, where there have been* CHANGES *of* INVESTMENT (*m*).

THIS APPOINTMENT, made, &c., BETWEEN A. B., of, &c., and C. B., his wife, formerly C. D., spinster (herein called "the appointors"), of the first part, L. M., of, &c. (herein called "the new trustee"), of the second part, and E. F., of, &c., and G. H., of, &c. (herein called "the surviving trustees"), and the new trustee, of the third part. WHEREAS this Deed is supplemental to a Settlement (herein called "the settlement") dated the —— day of ——, and made between [*parties, including a third trustee*, I. K.], being a settlement made in consideration of the marriage, then intended and shortly afterwards solemnised, of the appointors, whereby the investments therein mentioned were settled upon the trusts and subject to the powers and provisions therein contained, including a provision for the settlement of other and after-acquired property of the wife, and the appointors during their joint lives were nominated by the settlement as the persons for the purpose of appointing new trustees. AND WHEREAS the sum of £—— Two-and-a-half per Cent. Consolidated Stock was on the —— day of —— sold by the surviving trustees, and the said I. K., with the consent of the appointors, and the sum of £——, the net money arising from such sale, was on the same day invested in the purchase of £—— India £3 per Cent. Stock, in the names of the surviving trustees and the said I. K. AND WHEREAS the sums of £—— — per Cent. Preference Stock of the —— Railway Company, and £—— — per Cent. Debenture Stock of the —— Railway Company, were on the —— day of —— sold by the surviving trustees and the said I. K., with

Recital of marriage settlement.

Of sale of stock and re-investment.

Of sale of railway stock and re-investment.

(*l*) No additional stamp duty is required in respect of this declaration. The stamp duties in respect of appointments of new trustees generally are not affected by the Finance (1909-10) Act, 1910; see sect. 74, sub-sect. (6).

(*m*) The settlement here referred to will be found under SETTLEMENTS.

PRECEDENT II.

OF ONE TRUSTEE OF SETTLEMENT BY SUPPLEMENTAL DEED.

the consent of the appointors, and the sum of £——, part of the net money produced thereby, was on the —— day of —— invested by the surviving trustees and the said I. K., in the purchase in their own names of £—— Stock of the Bank of England, and £——, the residue of the said net money amounting to the sum of £——, was invested by them upon a Mortgage (herein called "the mortgage") dated the —— day of —— and made between [*parties*] whereby the hereditaments therein described were mortgaged to secure the sum of £—— with interest thereon at the rate of — per cent. per annum. AND WHEREAS A. D., the late father of the said C. B., having died intestate, leaving no widow but three children only (all of whom had attained the age of twenty-one years) him surviving, the proceeds of sale of his residuary estate became divisible between such three children in equal shares, and the one-third share thereof devolving on the said C. B. became subject to the covenant in the settlement contained for the settlement of her after-acquired property. AND WHEREAS there have been received in respect of such share of the said C. B. the following sums, namely, on the —— day of ——, the sum of £——, which was invested in the purchase in the names of the surviving trustees and the said I. K., of £—— Two-and-a-half per Cent. Consolidated Stock, and on the —— day of ——, the sum of £——, which was invested in the purchase in their names of a further sum of £—— like Stock (making altogether the sum of £—— like Stock), and no further sum has yet been received in respect of such share; AND WHEREAS the said I. K. died in the month of —— last; AND WHEREAS the appointors now desire to appoint the new trustee to be a trustee of the settlement in the place of the said I. K. AND WHEREAS, in contemplation of the appointment intended to be hereby made, the said several sums of £—— India 3 per Cent. Stock, £—— Bank of England Stock, and £—— Two-and-a-half per Cent. Consolidated Stock (*n*), have been lately transferred into the names of the surviving trustees and the new trustee. AND WHEREAS by a Transfer of Mortgage of even date herewith, but executed before this deed, and made between the surviving trustees, of the one part, and the surviving trustees and the new trustee, of the other part, the said mortgage debt and interest and the residue of the term of years created by the mortgage were assigned to the surviving trustees and the new trustee. NOW THIS DEED WITNESSETH, that the appointors, in exercise of the power conferred on them by the Trustee Act, 1925, as the persons nominated for the purpose

Of death of wife's father, and that part of his residuary estate became subject to covenant to settle after-acquired property. Of receipt and investment of wife's share.

Of death of one trustee.

Of desire to appoint new trustee.

Of transfer of funds.

Of transfer of mortgage.

Appointment of new trustee.

(*n*) The aggregate sum purchased with the money received on account of the distributive shares of the intestate's estate.

PRECEDENT II.

OF ONE TRUSTEE OF SETTLEMENT BY SUPPLEMENTAL DEED.

by the settlement, and of all other powers, Do hereby appoint the new trustee to be a trustee of the settlement in the place of the said I. K. [AND IT IS HEREBY DECLARED, that the surviving trustees and the new trustee [and the survivors and survivor of them and the personal representatives of such survivor (*o*)] shall hold the said sums of £—— India 3 per Cent. Stock, £—— Stock of the Bank of England, and £—— Two-and-a-half per Cent. Consolidated Stock, so transferred as aforesaid, and the said mortgage debt of £——, and the securities for the same so transferred and assured as aforesaid, UPON THE TRUSTS and subject to the powers and provisions applicable thereto respectively, by virtue of the settlement (*p*).] IN WITNESS, &c.

[Declaration of trust by continuing and new trustees.]

III.

PRECEDENT III.

OF WILL.

APPOINTMENT *by Surviving Trustees of a* NEW TRUSTEE *of a* WILL *of Real and Personal Estate* (*q*).

THIS APPOINTMENT, made, &c., BETWEEN E. F., of, &c., G. H., of, &c. (*r*) (herein called "the surviving trustees"), of the one part, and L. M., of, &c., (herein called "the new trustee"), of the other part. WHEREAS A. B., late of ——, &c., by his Will dated the —— day of ——, appointed the said surviving trustees and I. K., executors and trustees thereof, and after giving divers specific legacies and a pecuniary legacy, devised and bequeathed all his real and personal estate (except what he thereby otherwise disposed of) unto the trustees thereinbefore named, upon trust for sale, calling in and conversion, with power to postpone the same, and to hold the net proceeds and his ready money (after payment thereout as therein mentioned) upon the trusts and subject to the powers and provisions therein contained: and nominated his wife C. B. during her life for the purpose of appointing new trustees. AND WHEREAS the said A. B. died on the —— day of ——, and his said Will was proved by the executors therein named in the

Recital of the Will.

—of testator's death, and of probate;

—of death of wife, and a trustee.

(*o*) These words may be omitted, see p. 28.

(*p*) See note (*k*), p. 39. The more usual course is to transfer the funds and securities after the appointment is made; but they are sometimes transferred previously, as this Precedent contemplates.

(*q*) This Precedent will seldom be found suitable to any case except that of an appointment made very shortly after the testator's death. When there have been dealings with the estate, the next Precedent should be used.

(*r*) The testator's wife, to whom the power of appointment was given during her widowhood, is in this Precedent supposed to have died, so that the power of appointment is in the surviving trustees.

—— Registry (*s*) on the —— day of ——, 19—. And whereas the said C. B. died on the —— day of ——, and the said I. K. died in the month of —— last. Now this deed witnesseth as follows :— Precedent III. of will.

1. The surviving trustees, in exercise of the power conferred upon them by the Trustee Act, 1925, as the surviving trustees of the said Will and of all other powers, Do hereby appoint the new trustee to be a trustee of the said Will of the said A. B., in the place of the said I. K. Appointment of new trustee.

2. In pursuance of the appointment hereinbefore made, the surviving trustees as trustees do hereby convey unto the surviving trustees and the new trustee all the real estate so devised by the said Will as aforesaid, and now vested in the surviving trustees and G. H., to hold unto the surviving trustees and the new trustee in fee simple, upon the trusts, and subject to the powers and provisions applicable thereto by virtue of the said Will. Conveyance of real estate.

3. In further pursuance of the aforesaid appointment, the surviving trustees, as trustees, do hereby assign unto the surviving trustees and the new trustee all the personal estate so bequeathed by the said Will as aforesaid and now vested in the surviving trustees to hold unto the surviving trustees and the new trustee upon the trusts, and subject to the powers and provisions applicable thereto, by virtue of the said Will (*t*). In witness, &c. Assignment of personalty.

IV.

Appointment *by* Widow *of a* New Trustee *of a* Will *of* Real *and* Personal Estate *in the place of a* Trustee *who has been abroad for over a year.* Declaration *for* Vesting *the* Trust Estate. Precedent IV. of will with declaration vesting the trust estate.

THIS APPOINTMENT, made, &c., between C. B., of, &c. (widow of A. B., late of, &c., deceased) (herein called "the appointor"), of the first part, D. (herein called "the continuing trustee"), of the second part, E., of, &c. [*trustee abroad*], of the third part, F., of, &c. (herein called "the new trustee"), of the fourth part, and the continuing trustee and the new trustee of the fifth part. Whereas the said A. B., by his Will, Recital of will, death and probate.

(*s*) Or "Sub-Registry" : see Administration of Justice Act, 1925, sects. 17, 18, and Third Schedule.

(*t*) It will be noticed that the trust estate is vested in the continuing and new trustees by conveyance and assignment, and not by means of a declaration under sect. 40 of the T. Act, 1925. An appointment effectuated by means of such a declaration will be found in the next Precedent.

PRECEDENT IV.

OF WILL WITH DECLARATION VESTING THE TRUST ESTATE.

dated, &c., after appointing the continuing trustee and the said E. executors and trustees thereof, devised and bequeathed to them all his residuary real and personal estate upon the trusts and subject to the powers and provisions therein contained, and nominated the said C. B. during her life for the purpose of appointing new trustees. AND WHEREAS the testator died on the —— day of ——, 19—, and his said Will was proved on the —— day of ——, 19—, in the —— Registry, by the continuing trustee and the said E. AND WHEREAS the said E. [went to reside abroad in the year ——, and] has remained out of the United Kingdom for more than twelve months [and is still residing abroad] (*u*), and the said C. B. desires to appoint the new trustee to be a trustee thereof in the place of the said E. AND WHEREAS the property subject to the trusts of the said Will now consists of (1) the freehold and leasehold hereditaments mentioned in the First Schedule hereto; (2) the furniture, chattels, and effects mentioned in the Second Schedule hereto; and (3) the mortgage debts, stocks, shares and securities mentioned in the Third Schedule hereto, and intended to be transferred unto the continuing trustee and the new trustee immediately after the execution of these presents. NOW THIS DEED WITNESSETH as follows :—

Of residence abroad of one trustee and of desire of appointor to appoint a new trustee.

Of particulars of trust estate.

Appointment of new trustee.

1. The said C. B., in exercise of the power in this behalf conferred upon her by the Trustee Act, 1925, as the person nominated for the purpose by the said Will, and of all other powers, DOTH hereby appoint the new trustee to be a trustee of the same Will in the place of the said E., and to act jointly with the continuing trustee for all the purposes thereof.

Vesting declaration by appointor.

2. In pursuance of the appointment hereinbefore made, the said C. B. doth hereby DECLARE that ALL AND SINGULAR the freehold and leasehold hereditaments mentioned in the First Schedule hereto, AND ALSO, ALL AND SINGULAR, the furniture, chattels, and effects mentioned in the Second Schedule hereto, AND ALL OTHER (if any) the freehold and leasehold hereditaments and chattels now vested in the continuing trustee and the said E. upon the trusts of the said Will or otherwise subject thereto, and the right to recover and receive any debt or thing in action

(*u*) The statement that the trustee has remained out of the United Kingdom for more than twelve months is now, in favour of a purchaser of a legal estate, conclusive evidence of the matter stated (T. Act, 1925, sect. 38, set out under General Remarks above). Remaining abroad for over a year does not of itself deprive the trustee of the trusteeship, but empowers the proper person to appoint a new trustee : see *O'Reilly* v. *Anderson* (1849), 8 Ha. 101; *Re Stamford*, [1896] 1 Ch. 288; *Re Walker*, [1901] 1 Ch. 259. The trustee abroad is not a necessary party to the appointment, unless he is the sole surviving trustee and appoints, there being no person nominated for the purpose. As to the meaning of "United Kingdom," see T. Act, 1925, sect. 68, sub-sect. (17).

so subject and not comprised in the said Third Schedule shall vest in the continuing trustee and the new trustee for all such estate or right to which this declaration relates as the continuing trustee and the said E. had therein immediately before the execution of these presents, or as the same are held under the same Will (*x*). IN WITNESS, &c.

PRECEDENT IV.

OF WILL WITH DECLARATION VESTING THE TRUST ESTATE.

FIRST SCHEDULE—*Freehold and leasehold hereditaments.*

SECOND SCHEDULE—*Furniture, chattels, and effects.*

THIRD SCHEDULE—Mortgage debts, stocks, shares, and securities.

V.

APPOINTMENT *by* CONTINUING TRUSTEE *and a* RETIRING TRUSTEE *who desires to be discharged but is willing to act in the Appointment.*

PRECEDENT V.

BY CONTINUING AND RETIRING TRUSTEE.

THIS APPOINTMENT, made the —— day of ——, BETWEEN A., of, &c. (herein called "the continuing trustee"), of the first part, B., of, &c. (herein called "the retiring trustee"), of the second part, C., of, &c. (herein called "the new trustee"), of the third part, and the continuing trustee and the new trustee, of the fourth part. WHEREAS the late X., by his Will dated the —— day of ——, after appointing the continuing trustee and the retiring trustee the executors and trustees thereof, devised and bequeathed to them his residuary real and personal estate upon trust for sale and conversion, and after payment out of the proceeds and of his ready money of his funeral and testamentary expenses and debts and the pecuniary legacies thereby bequeathed and the duty payable on any legacy given free of duty, to invest the residue in any investment authorised by the law for the time being for the investment of trust money and to hold such investments (herein called "the trust fund") UPON THE TRUSTS and subject to the powers and provisions therein mentioned. AND WHEREAS the testator died on the —— day of ——, and his said Will was proved on the —— day of ——, in the —— Registry, by the continuing trustee and the retiring trustee. AND WHEREAS the estate of the testator has long since been administered by the continuing trustee and the retiring trustee as personal representatives of the said X., deceased,

Recital of Will appointing trustees and settling property on trust for sale.

—of death and probate;

—of assent;

(*x*) This vesting declaration may now be omitted, and the deed will operate as if it had contained such a declaration: see T. Act, 1925, sect. 40, set out under General Remarks, above. If the retiring trustee is a party and executes the deed abroad, he may properly be required to execute it in the presence of a Notary Public, Consul, or other person of recognised position. The mortgage would be transferred by separate deed of transfer: see MORTGAGES.

PRECEDENT V.

BY CONTINUING AND RETIRING TRUSTEE.

and they having assented to the said devise and bequest (*y*) hold the trust fund and the investments [and cash] representing the same as trustees of the said Will. AND WHEREAS the trust fund is now represented by the investments [and cash] stated in the Schedule hereto. AND WHEREAS the retiring trustee desires to be discharged from the trusts of the said Will and the continuing trustee desires to appoint the new trustee to be a trustee thereof in his place, and the retiring trustee is willing to act in exercise of his statutory power and join in making the appointment (*z*). AND WHEREAS it is intended forthwith to transfer the said investments into the joint names of the continuing trustee and the new trustee [and to place the said cash with all interest (if any) accrued due thereon under the joint control of the continuing trustee and the new trustee, who intend forthwith to invest the same in authorised investments in their joint names after payment thereout of the costs of and incidental to such transfers and investments and the preparation and execution of this appointment]. NOW THIS DEED WITNESSETH that, in exercise of the power conferred by the Trustee Act, 1925, and of all other powers, the continuing trustee and the retiring trustee Do hereby appoint the new trustee to be a trustee of the said Will of X., deceased, in the place of the retiring trustee, and to act jointly with the continuing trustee for all the purposes thereof. IN WITNESS, &c. (*a*).

—of state of fund;

—of retirement of trustee, &c.;

—of intention to transfer fund.

Appointment of new trustee.

SCHEDULE—*Investments [and cash] representing trust fund.*

VI.

PRECEDENT VI.

OF NEW TRUSTEE OF VESTING DEED.

APPOINTMENT *of a* NEW TRUSTEE *of a* VESTING DEED *for the purposes of the* SETTLED LAND ACT, 1925.

THIS APPOINTMENT, made, &c., BETWEEN A. B., of, &c., and C. B., his wife (herein called "the appointors"), of the first part, E., of, &c. (herein called "the continuing trustee"), of the second part, and F., of, &c. (herein called "the new trustee"), of the third part. WHEREAS this deed is supplemental to a Vesting Deed dated, &c., and made between the said A. B., of the first part, the said C. B. (then C. D., spinster), of

Recital of vesting deed.

(*y*) If the testator's residuary estate included land, an assent to pass the legal estate must now be in writing (A. E. Act, 1925, sect. 36, sub-sect. (4)), but it is here assumed that the estate was realised before 1926.

(*z*) See T. Act, 1925, sect. 36, sub-sect. (8). If the retiring trustee is not so willing, this fact should be recited, and the appointment will be by the continuing trustee alone.

(*a*) In this case a vesting declaration appears to be unnecessary.

PRECEDENT VI.
OF NEW TRUSTEE OF VESTING DEED.

the second part, and the continuing trustee and G., of the third part, being a deed made in consideration of the marriage shortly afterwards solemnised between the appointors, whereby it was declared that the freehold hereditaments therein described were vested in the said A. B. in fee simple upon the trusts declared by a Trust Instrument of even date therewith, and that the continuing trustee and the said G. were the trustees of the settlement for the purposes of the Settled Land Act, 1925, and the appointors during their joint lives were nominated for the purpose of appointing new trustees thereof. AND WHEREAS the said G. died on the —— day of ——, and the appointors desire to appoint a new trustee in the place of the said G. NOW THIS DEED WITNESSETH that the appointors, in exercise of the power conferred on them by the Trustee Act, 1925, as the persons nominated for the purpose of the Vesting Deed and of all other powers Do hereby appoint the new trustee to be a trustee of the settlement for the purposes of the Settled Land Act, 1925, in the place of the said G., deceased, to act jointly with the continuing trustee. IN WITNESS, &c. (*b*).

—of death of a trustee and desire to appoint new trustee.

Appointment of new trustee.

VII.

PRECEDENT VII.
BY SUPPLEMENTAL DEED OF TERM CREATED BY SETTLEMENT.

APPOINTMENT (*by* SUPPLEMENTAL DEED) *of a* NEW TRUSTEE *of a* TERM OF YEARS *created by a* SETTLEMENT OF LAND (*c*).

THIS APPOINTMENT, made, &c., BETWEEN C. B., of, &c., widow (herein called "the appointor"), of the first part, E., of, &c., and F., of, &c. [*old trustees*], of the second part, and G., of, &c. [*new trustee*], of the third part, BEING SUPPLEMENTAL to a Settlement (herein called "the settlement"), dated [&c., *before* 1926. *If after* 1925, *say* "Trust Instrument"] and made between A. B. now deceased, of the first part, the appointor (then C. D., spinster), of the second part, and the said E. and F., of the third part (being a settlement made in consideration of the marriage then intended, and shortly afterwards solemnised, between the said A. B. and the appointor), WITNESSETH as follows :—

1. In exercise of the power conferred upon the appointor by the Trustee Act, 1925, as the person by the settlement nominated for the purpose, and of all other powers, the

Appointment of new trustee.

(*b*) A similar appointment will be made of the same person as new trustee of the trust instrument. A memorandum of the name and address of the new trustee should be endorsed on, or annexed to, the vesting deed : see T. Act, 1925, sect. 35, and S. L. Act, 1925, sect. 35, both of which sections are set out under General Remarks, above, at p. 36.

(*c*) The term would probably be one limited for raising portions.

PRECEDENT VII.

BY SUPPLEMENTAL DEED OF TERM CREATED BY SETTLEMENT.

appointor (*d*) DOTH hereby appoint the said G. to be a trustee of the term of —— years limited by the settlement, in the place of the said F., who desires to be discharged.

Assignment of premises comprised in term.

2. The said E. and F., AS TRUSTEES, Do hereby assign unto the said E. and G. (*e*), ALL the hereditaments limited by the settlement to the said E. and F. for the said term of —— years, TO HOLD unto the said E. and G. for the residue of the said term as joint tenants, UPON THE TRUSTS and for the purposes of the settlement. IN WITNESS, &c.

VIII.

PRECEDENT VIII.

RETIREMENT DEED.

DEED POLL SUPPLEMENTAL *to* CONVEYANCE *of* LAND *on* TRUST FOR SALE *effecting the* RETIREMENT *of a* TRUSTEE, *who desires to be discharged* (*f*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, E., of, &c. (herein called "the retiring trustee"), F., of, &c., and G., of, &c. (herein called "the continuing trustees"), and A. B., of, &c., and C. B., his wife [*the persons empowered to appoint new trustees*], send greeting. WHEREAS these presents are supplemental to a Conveyance (herein called "the principal deed") dated the —— day of ——, and made between the said A. B., of the first part, the said C. B. (then C. D., spinster), of the second part, and the retiring trustee and the continuing trustees, of the third part (being a conveyance of land on trust for sale made in consideration of the marriage then intended, and shortly afterwards solemnised, between the said A. B. and C. B.). AND WHEREAS no part of the hereditaments comprised in the principal deed has as yet been sold. AND WHEREAS the retiring trustee desires to retire and to be discharged from the trusts of the principal deed, but it is not at present desired to appoint a new trustee in his place. NOW THESE PRESENTS WITNESS as follows :—

Recital referring to principal deed.

Declaration by trustee desiring discharge and consent of co-trustees and husband and wife.

Vesting declaration.

(*d*) The power is supposed to be given to the wife by the settlement.

(*e*) The transfer might, in the alternative, be omitted in reliance on the implied statutory vesting declaration (see note (*b*) to preceding Precedent), or be effected by means of a vesting declaration by the appointor as follows :—

"2. The appointor Doth hereby DECLARE that ALL the hereditaments limited by the settlement to the said E. and F. for the said term of —— years shall vest in the said E. and G. for the residue of the said term as joint tenants upon the trusts and for the purposes of the settlement."

(*f*) See sect. 39 of the T. Act, 1925, set out under General Remarks, p. 32. The deed is connected with the conveyance of freeholds in trust for sale : see CONVEYANCES, Precedent V. See also sect. 35, at p. 36.

PRECEDENT VIII.

RETIREMENT DEED.

1. In exercise of the power conferred by the Trustee Act, 1925, and of all other powers, the retiring trustee Doth hereby declare that he is desirous of being discharged from the trusts of the principal deed, and the continuing trustees, being his co-trustees, and the said A. B. and C. B. being the persons empowered to appoint new trustees, Do hereby consent to the discharge of the retiring trustee from the said trusts, and to the vesting in the continuing trustees alone of the trust property, To the intent that the retiring trustee shall be deemed to have retired from the said trusts and shall by virtue of the same statute be discharged therefrom.

Declaration vesting the trust estate in the continuing trustees.

2. In pursuance of the statutory direction in this behalf, the retiring trustee and the continuing trustees, and also the said A. B. and C. B., Do hereby declare that the hereditaments described in the principal deed, and all other the hereditaments (if any) now vested in the retiring trustee and the continuing trustees upon the subsisting trusts of the same deed, shall, upon the execution of these presents, vest in the said continuing trustees alone, as joint tenants, for all such estate and interest as the retiring trustee and the continuing trustees had therein immediately before the execution of these presents and upon the trusts and subject to the powers and provisions applicable thereto by virtue of the principal deed (*g*). IN WITNESS, &c.

(*g*) A conveyance or assignment in the ordinary form may be substituted for this declaration, or clause 2 may be omitted in reliance on the statutory implied vesting declaration: T. Act, 1925, sect. 40, set out at p. 33. And where there is property incapable of being vested by such a declaration (see sub-sect. (4) of sect. 40 of the T. Act, 1925), it will be proper to recite the intention to transfer it immediately after the execution of the deed.

ASSENTS.

General Remarks.

Assents made after 1925.

Assents given by personal representatives after 1925, especially in the case of land, are now governed by sect. 36 of the A. E. Act, 1925, which is as follows :—

A. E. Act, 1925, s. 36.

36.—(1) A personal representative may assent to the vesting, in any person who (whether by devise, bequest, devolution, appropriation or otherwise) may be entitled thereto, either beneficially or as a trustee or personal representative, of any estate or interest in real estate to which the testator or intestate was entitled or over which he exercised a general power of appointment by his will, including the statutory power to dispose of entailed interests, and which devolved upon the personal representative.

(2) The assent shall operate to vest in that person the estate or interest to which the assent relates, and, unless a contrary intention appears, the assent shall relate back to the death of the deceased.

(3) The statutory covenants implied by a person being expressed to convey as personal representative, may be implied in an assent in like manner as in a conveyance by deed.

(4) An assent to the vesting of a legal estate shall be in writing, signed by the personal representative, and shall name the person in whose favour it is given and shall operate to vest in that person the legal estate to which it relates; and an assent not in writing or not in favour of a named person shall not be effectual to pass a legal estate.

(5) Any person in whose favour an assent or conveyance of a legal estate is made by a personal representative may require that notice of the assent or conveyance be written or endorsed on or permanently annexed to the probate or letters of administration, at the cost of the estate of the deceased, and that the probate or letters of administration be produced, at the like cost, to prove that the notice has been placed thereon or annexed thereto.

(6) A statement in writing by a personal representative that he has not given or made an assent or conveyance in respect of a legal estate, shall, in favour of a purchaser, but without prejudice to any previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative, be sufficient evidence that an assent or conveyance has not been given or made in respect of the legal estate to which the statement relates, unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration.

A conveyance by a personal representative of a legal estate to a purchaser accepted on the faith of such a statement shall (without prejudice as aforesaid and unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration) operate to transfer or create the legal estate expressed to be conveyed in like manner as if no

previous assent or conveyance had been made by the personal representative.

A personal representative making a false statement, in regard to any such matter, shall be liable in like manner as if the statement had been contained in a statutory declaration.

(7) An assent or conveyance by a personal representative in respect of a legal estate shall, in favour of a purchaser, unless notice of a previous assent or conveyance affecting that legal estate has been placed on or annexed to the probate or administration, be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person entitled to have the legal estate conveyed to him, and upon the proper trusts, if any, but shall not otherwise prejudicially affect the claim of any person rightfully entitled to the estate vested or conveyed or any charge thereon.

(8) A conveyance of a legal estate by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral, and testamentary or administration expenses, duties, and legacies of the deceased have been discharged or provided for.

(9) An assent or conveyance given or made by a personal representative shall not, except in favour of a purchaser of a legal estate, prejudice the right of the personal representative or any other person to recover the estate or interest to which the assent or conveyance relates, or to be indemnified out of such estate or interest against any duties, debt, or liability to which such estate or interest would have been subject if there had not been any assent or conveyance.

(10) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any such duties, debt, or liability, but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of any such duties, debt or liability if reasonable arrangements have been made for discharging the same; and an assent may be given subject to any legal estate or charge by way of legal mortgage.

(11) This section shall not operate to impose any stamp duty in respect of an assent, and in this section "purchaser" means a purchaser for money or money's worth.

(12) This section applies to assents and conveyances made after the commencement of this Act, whether the testator or intestate died before or after such commencement.

Meaning of "real estate."

"Real estate" in this section means real estate, including chattels real, which, by virtue of Part I. of the Act, devolves on the personal representatives of a deceased person : see A. E. Act, 1925, sect. 55, sub-sect. (1) (xix), and sect. 3.

Relation back to death.

The provision in sub-sect. (2) as to the assent relating back to the death of the deceased, would appear to be inapplicable in the case of residue : see *Barnardo's Homes* v. *Income Tax Commrs.*, [1921] 2 A. C. 1.

Covenant against incumbrances.

By sub-sect. (3) the statutory covenant against incumbrances implied by conveying "as personal representative" (see L. P.

Act, 1925, sect. 76, set out under CONVEYANCES, General Remarks) may now be implied in an assent in writing under hand only, as well as previously in an assent by deed, and so renders a deed for that purpose unnecessary.

Assent vesting legal estate to be in writing.

The effect of sub-sect. (4) is important, as, where a legal estate in land is to be passed, the assent of the representative can no longer be implied. Before 1898 an assent to a bequest of leaseholds might be either express or implied (see *Wise* v. *Whitburn*, [1924] 1 Ch. 460), and since 1897 an assent to a devise of freeholds followed the same rule. Now, however, in the case of land, where a legal estate is to be vested either in fee simple or for a term of years absolute, the assent must be given by some instrument in writing. If this provision is strictly construed, it is thought that assents may still be implied in cases of property where the interest is merely equitable. Although, therefore, in all cases where the property consists of some interest in land, it may be prudent that the assent should be in writing, yet no writing is required by the words of the sub-section, except in the case of a legal estate. Thus, if a testator is entitled to an equitable remainder in fee simple, subject to a prior life or other interest, and he devises this remainder to a beneficiary, there is no legal estate to be passed, and the assent of his executors may, it is thought, be implied.

Notice of assent to be endorsed on probate.

The power conferred by sub-sect. (5) on the person in whose favour an assent or conveyance is made by the representative, of requiring notice of the assent to be endorsed on the probate, or, in the case of administration with the will annexed, upon the letters of administration, will probably be exercised with a view to subsequent dealings with the land. The form of the notice should be as concise as possible : see NOTICES, where a form will be found.

Evidence of assent on conveyance to purchaser.

Sub-sects. (6) to (8) inclusive afford protection to a purchaser on a conveyance to him by a personal representative as such for purposes of administration : see CONVEYANCES, Precedent XVII. Note that "purchaser" in sect. 36 means a purchaser for money or money's worth : sub-sect. (11).

Assent subject to indemnity or security.

The provision in sub-sect. (9) gives statutory force to the right to indemnity of executors, notwithstanding an assent, while sub-sect. (10) enables them in certain cases to require security in cases, presumably, where their right to indemnity does not extend. If the land has been mortgaged, the assent may be given subject to the mortgage.

Stamp duty.

No stamp duty was previously payable on an assent under hand only to a devise of real estate (*Kemp* v. *Inland Revenue Commrs.*, [1905] 1 K. B. 581); and the object of sub-sect. (11)

is not quite clear, unless perhaps to dispel a doubt whether the implied covenant against incumbrances might have otherwise attracted the duty.

To what assents section applies.

By sub-sect. (12) the section applies to assents and conveyances made after 1925, and whether the deceased died before or after 1926; but presumably only, so far as regards freeholds, at any rate, if the deceased died after 1897, for under the law before January 1, 1898 (when the L. T. Act, 1897, came into operation), no assent to a devise of devisable freeholds was required to pass the estate to the devisee: see Co. Litt. 111 a; *Bunker* v. *Cook* (1707), 3 B. P. C. 19; affirming 11 Mod. 122. This point is perhaps doubtful.

Power to give possession before assent.

As to the power of personal representatives before giving an assent or conveying to allow the person entitled to take possession of the land, see A. E. Act, 1925, sect. 43.

Assent by one of several executors.

Hitherto the assent of one of several executors was sufficient to pass the legal estate in leasehold land, as in the case of other personal estate. But as to freehold land, it was doubtful whether it could be assumed that the same rule applied: see Wms. V. & P. (1922), Vol. 1, p. 216, note (*n*).

But now, as regards freeholds (and, it would seem, also as regards leaseholds), all the proving executors must join: see A. E. Act, 1925, sect. 2, sub-sect. (2), and the definitions of "conveyance," sect. 55, sub-sect. (1) (ii), and of "real estate," sect. 55, sub-sect. (1) (xix).

It follows, therefore, that in order by assent to pass the legal estate in freeholds or leaseholds, such assent (a) should be in writing; (b) should name the person in whose favour it is given; (c) should be made by all the proving executors.

Methods of vesting legal estate.

There are thus three methods by which the executors may vest the legal estate in the devisee or legatee—(1) assent in writing under hand only; (2) assent by deed under hand and seal (sealing alone by an individual is now not sufficient: see L. P. Act, 1925, sect. 73); (3) conveyance or assignment.

Which of these methods should be chosen depends upon the circumstances in each particular case.

Statutory forms.

Forms of Assent Nos. 8 and 9 in the Fifth Schedule to the L. P. Act, 1925, are set out below: see Precedents VI. and VII. These statutory forms need not, it is thought, be exactly followed, as, in regard to form and expression, instruments "in the like form or using expressions to the like effect" are sufficient: see sect. 206, sub-sect. (1). Compare Precedents I., II., and IV.

Vesting assent in

In accordance with the new scheme for the settlement of land, provision had to be made on death for the passing on of

Case of settled land.

the legal estate to the next tenant for life or to the statutory owner. This is effected as follows : (1) Where the settlement is subsisting on January 1, 1926, and the settled land is vested in the personal representatives of a person who dies before that date (S. L. Act, 1925, Second Schedule, para. 2), or (2) where the settlement is created by the will of an estate owner who dies after 1925 (S. L. Act, 1925, sect. 6), or (3) where the settlement is created *inter vivos* after 1925, then on the death of the tenant for life, or of the statutory owner in whom the settled land is vested (S. L. Act, 1925, sect. 7), the personal representatives in each case hold the land on trust to convey it to the tenant for life or statutory owner. Instead of a conveyance, the vesting of the land may be made in writing by a "vesting assent" : see S. L. Act, 1925, Second Schedule, para. 2, and sect. 8, and definition in sect. 117, sub-sect. (1) (xxxi), and for a Statutory Form of Vesting Assent, see First Schedule, Form No. 5, set out below.

Registered land.

In the case of registered land, an assent must be in the form prescribed by the Rules (L. R. Act, 1925, sect. 41, sub-sect. (4), sect. 3 (xix), and L. R. Rules, 1925, r. 74), but where the personal representatives are registered as proprietors, no fee is chargeable for registering any disposition, unless for valuable consideration : L. R. Act, 1925, sect. 145, sub-sect. (2). Special provisions as to changes of ownership of settled land are contained in sect. 87 of the same Act.

PRECEDENTS (*a*).

I.

Precedent I.

To specific devisee of freeholds.

Assent *by* Executors *to* Specific Devise *of* Freeholds *entitled in fee simple free from incumbrances* (*b*).

We, A., of, &c., and B., of, &c., being the persons named as executors in the Will dated the —— day of ——, of C., late of, &c., deceased, who died on the —— day of —— and whose said Will was proved by us on the —— day of —— in the —— Registry, Do hereby, AS PERSONAL REPRESENTATIVES of the said C., deceased, assent to the devise thereby made to D. of the freehold hereditaments therein described as [*parcels*

(*a*) The following Precedents include forms of conveyances by personal representatives as such to beneficiaries, as well as mere assents.

(*b*) Compare Form No. 8 in Fifth Schedule to L. P. Act, 1925 (set out below), and as to this and the following Precedents, see General Remarks, above.

as in Will (*c*)] and to the vesting thereof in the said D. for an estate in fee simple. As WITNESS, &c. (*d*).

PRECEDENT I.

TO SPECIFIC DEVISEE OF FREEHOLDS.

II.

ASSENT *by* EXECUTORS *to* VESTING *of* FREEHOLDS *in themselves* [*or others*] *as* TRUSTEES FOR SALE (*e*).

PRECEDENT II.

TO VESTING OF FREEHOLDS IN TRUSTEES FOR SALE.

We, A., of, &c., and B., of, &c. [*continue as in Precedent I. to the word "Registry"*] :—

Assent.

1. Do hereby, AS PERSONAL REPRESENTATIVES of the said C., deceased, assent to the vesting in ourselves [*or* "in D., of, &c., and E., of, &c."] of the hereditaments described in the said Will as [*parcels as in Will*] [or the hereditaments described in the Schedule hereto] for an estate in fee simple UPON TRUST to sell the same or any part thereof with power to postpone the sale and to stand possessed of the net proceeds of sale and other money applicable as capital and the net rents and profits until sale upon the trusts declared by the said Will concerning the same.

Persons to appoint new trustees.

2. Do hereby nominate F., of, &c., and G., of, &c., during their joint lives, and the survivor of them during his [or her] life, as the persons or person for the purpose of appointing new trustees hereof (*f*). As WITNESS, &c.

III.

CONVEYANCE *of* FREEHOLDS *by* PERSONAL REPRESENTATIVES *to* DEVISEE.

PRECEDENT III.

BY PERSONAL REPRESENTATIVES TO DEVISEE.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c., and B., of, &c. (herein called "the executors"), of the one part, and C., of, &c. [*devisee*], of the other part. WHEREAS D.,

Recitals: —of will, death and probate;

(*c*) A specific devisee cannot require that the land should be described in more precise terms than those in the will: *Re Pix*, [1901] W. N. 165. If the devise were general, as of "all my real estate," the following words may, it is thought, be added, "which real estate comprised the hereditaments described in the Schedule hereto."

(*d*) As this assent is under hand only, no stamp duty is payable. See General Remarks, above.

(*e*) Compare Form No. 9 in Fifth Schedule to L. P. Act, 1925, set out below, as Precedent VII, and see notes to preceding Precedent.

(*f*) See T. Act, 1925, sect. 36, sub-sect. (1) (a). Where no person is nominated by the will for appointing new trustees, the following clause may be substituted: "2. Do hereby declare that the statutory power of appointing new trustees applies to this Assent" (see Statutory Form No. 9), but such declaration seems superfluous: see T. Act, 1925, sect. 36, sub-sect. (1) (b).

PRECEDENT III.

BY PERSONAL REPRESENTATIVES TO DEVISEE.

late of ——, by his Will dated the —— day of ——, after appointing the executors to be the executors thereof, devised all his real estate to the said C. and died on the —— day of ——, 19—, and his said Will was proved by the executors in the —— Registry on the —— day of ——, 19—. AND WHEREAS the said D. was at his death seised of the hereditaments hereinafter described for an estate in fee simple in possession free from incumbrances. AND WHEREAS the executors [have paid all funeral and testamentary expenses and the debts of the testator and death duties of which they have had notice (*g*), and have duly advertised for creditors pursuant to the Trustee Act, 1925 (*h*), and] by way of assent to the said devise have at the request of the said C. agreed to convey to him the said hereditaments (*i*). NOW THIS DEED WITNESSETH, that in compliance with the said request, the executors, AS PERSONAL REPRESENTATIVES of the said D., deceased, Do hereby assent to the said devise and convey and confirm unto the said C. ALL the hereditaments described in the Schedule hereto [*or* in the said Will as —— [*parcels as in Will: see note to Precedent I.*] TO HOLD unto the said C. in fee simple. IN WITNESS, &c.

—of seisin;

—of assent;

—of request to convey.

SCHEDULE—*Description of hereditaments.*

IV.

PRECEDENT IV.

ASSENT TO BEQUEST OF LEASEHOLDS.

ASSENT *by* EXECUTORS *to* SPECIFIC BEQUEST *of* LEASEHOLDS (*k*).

We, A., of, &c., and B., of, &c. [*continue as in Precedent I. to the word "Registry"*] Do hereby AS PERSONAL REPRESENTATIVES of the said C., deceased, assent to the bequest thereby made to D. of the leasehold hereditaments therein described as [*parcels as in Will*] and to the vesting thereof in the said D. for all the estate or interest of the said C. at the time of his death [in the residue of the term of years created by the lease

(*g*) It may be convenient, if such be the fact, to introduce a recital to this effect, although not strictly necessary. As to the right of the executors to indemnity, see A. E. Act, 1925, sect. 36, sub-sect. (9), set out above under General Remarks. Where an executor carries in a residuary account, the presumption is that the administration is closed: see *Re Claremont*, [1923] 2 K. B. 718.

(*h*) See T. Act, 1925, sect. 27, set out under NOTICES, General Remarks.

(*i*) It is often considered advisable for the devisee to have the land conveyed to him; but the personal representatives have an option either to assent or to convey: see *Re Pix*, [1901] W. N. 165.

(*k*) Compare Form No. 8 in Fifth Schedule to L. P. Act, 1925 (set out below), and see notes to Precedent I.

under which the premises are held, and subject to the payment and observance and performance by the said D. of the rent thereby reserved and of the covenants by the lessee and the conditions therein contained (*l*)]. As WITNESS, &c.

PRECEDENT IV.

ASSENT TO BEQUEST OF LEASEHOLDS.

V.

ASSIGNMENT *by* EXECUTORS *to* SPECIFIC LEGATEE *of* LEASEHOLDS (*m*).

PRECEDENT V.

ASSIGNMENT OF LEASEHOLD HOUSE TO SPECIFIC LEGATEE.

THIS ASSIGNMENT, made the —— day of ——, BETWEEN A., of, &c., and B., of, &c. (herein called "the executors"), of the one part, and C., of, &c. (herein called "the legatee"), of the other part. WHEREAS by a Lease (herein called "the lease") dated the —— day of ——, and made between [*lessor*], of the one part, and [*lessee*], of the other part, the said [*lessor*] demised unto the said [*lessee*] ALL THAT dwelling-house and garden situate, &c. [*parcels as in lease*], for the term of —— years from the —— day of —— at the yearly rent of £——, and subject to the covenants by the lessee and the conditions therein contained [*If premises were assigned to testator recite assignment, or if several assignments recite that after divers assignments the premises became vested in the testator*]. AND WHEREAS the said [*testator*] died on the —— day of ——, having by his Will dated the —— day of —— appointed the executors to be executors thereof and bequeathed the said dwelling-house and garden to the legatee. AND WHEREAS the executors on the —— day of —— proved the said Will in the —— Registry, and [having paid, &c. (*n*)] have assented to the said bequest, and have agreed at the request of the legatee and in consideration of the covenants by the legatee herein contained to assign the premises in manner hereinafter appearing NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the premises :—

Recital of lease.

Probate of will and agreement to assign.

1. The executors, AS PERSONAL REPRESENTATIVES of the said [*testator*], deceased, Do hereby assign and convey unto the legatee ALL THAT dwelling-house, garden and premises demised by the lease, and so bequeathed as aforesaid, TO HOLD unto the legatee for the residue of the said term of —— years, subject

Assignment of term.

(*l*) The words in brackets should, it is thought, be added, and see subsect. (10) of sect. 36 of the A. E. Act, 1925. If the liabilities are onerous, an assignment by deed (as in the next Precedent) would probably be preferred.

(*m*) See notes to preceding Precedent.

(*n*) Recite, if desired, that executors have paid expenses and debts and advertised for creditors, as in Precedent III., but see notes thereto.

PRECEDENT V.

ASSIGNMENT OF LEASEHOLD HOUSE TO SPECIFIC LEGATEE.

to payment of the rent thereby reserved and observance and performance of the covenants by the lessee and the conditions therein contained.

Covenant by legatee to pay rent, &c. (*o*).

2. The legatee Doth hereby covenant with the executors, and with each of them, that the legatee or his successors in title will, as from the date of the testator's death, pay the rent reserved by the lease and observe and perform the covenants by the lessee and the conditions therein contained, and will, as from the same date, keep indemnified the executors and each of them and the estate of the said [*testator*], deceased, from and against all proceedings, costs, claims, and expenses incurred by them or either of them in respect of any omission to pay such rent or breach of the said covenants or conditions or any of them. IN WITNESS, &c.

VI.

PRECEDENT VI.

STATUTORY FORM OF ASSENT TO PERSON ABSOLUTELY ENTITLED.

STATUTORY FORM *of* ASSENT *by* PERSONAL REPRESENTATIVE *in Favour of a* PERSON ABSOLUTELY ENTITLED *free from Incumbrances* (*p*).

I, A. B., of, &c., AS THE PERSONAL REPRESENTATIVE of X. Y., late of, &c., deceased, do this —— day of ——, 19—, hereby, AS PERSONAL REPRESENTATIVE, assent to the vesting in C. D., of, &c., of [ALL THAT farm, &c.] *or* [ALL THE property described in the Schedule hereto] for all the estate or interest of the said X. Y. at the time of his death [*or*, for an estate in fee simple]. AS WITNESS, &c.

VII.

PRECEDENT VII.

STATUTORY FORM OF ASSENT TO TRUSTEES FOR SALE.

STATUTORY FORM *of* ASSENT *by* PERSONAL REPRESENTATIVE *in Favour of* TRUSTEES FOR SALE (*q*).

We, A. B., of, &c., and C. D., of, &c., AS THE PERSONAL REPRESENTATIVES of X. Y., late of, &c., deceased, do this —— day of ——, 19—, hereby :—

(*o*) As this is not a conveyance for value, sect. 77, sub-sect. (1) (c) of the L. P. Act, 1925, does not apply so as to imply this covenant.

(*p*) This is the statutory Form No. 8 in the Fifth Schedule to the L. P. Act, 1925 : see sect. 206, sub-sect. (1), and compare Precedent I., above. The following note is added to the statutory Form :—

> "The expression 'conveyance' includes an assent, but an assent will relate back to the death unless a contrary intention appears. An assent may be properly given though duties remain to be paid if the personal representative is satisfied in regard to the arrangements made for payment."

(*q*) This is the statutory Form No. 9 in the Fifth Schedule to the L. P. Act, 1925 : see sect. 206, sub-sect. (1), and compare Precedent II., above.

PRECEDENT VII.

STATUTORY FORM OF ASSENT TO TRUSTEES FOR SALE.

1. As PERSONAL REPRESENTATIVES assent to the vesting in [ourselves *or*] T. A., of, &c., and T. B., of, &c., of ALL THOSE, &c., TO HOLD unto [ourselves *or*] the said T. A. and T. B. in fee simple UPON TRUST to sell the same or any part thereof with full power to postpone the sale and to stand possessed of the net proceeds of sale and other money applicable as capital and the net rents and profits until sale upon the trusts respectively declared concerning the same [*or* the proceeds of sale and the rents and profits of certain property at ——] by the Will dated, &c., of, &c. [*or* by the Settlement dated, &c., *or otherwise as the case may require*].

2. And declare that F., of, &c., and M., of, &c., during their joint lives and the survivor of them during his or her life have or has power to appoint new trustees of this assent [*or* "that the statutory power to appoint new trustees applies to this assent" *or otherwise as the case requires to correspond with the power applicable to the Will or Settlement*]. As WITNESS, &c.

VIII.

STATUTORY FORM *of* VESTING ASSENT *by* PERSONAL REPRESENTATIVES (*r*).

PRECEDENT VIII.

STATUTORY FORM OF VESTING ASSENT BY PERSONAL REPRESENTATIVES.

1. E. F., of, &c., and G. H., of, &c., AS THE PERSONAL REPRESENTATIVES of X. Y., late of, &c., deceased, do this —— day of ——, 19—, hereby, AS PERSONAL REPRESENTATIVES, assent to the vesting in C. D., of, &c., of [ALL THAT farm, &c.] *or* [ALL the property described in the Schedule hereto] for all the estate or interest of the said X. Y. at the time of his death [*or*, for an estate in fee simple].

2. The premises are vested in the said C. D. upon the trusts declared concerning the same by, &c.

(*r*) This is the statutory Form No. 5 in the First Schedule to the S. L. Act, 1925. As to the meaning and effect of this vesting assent, see General Remarks, above.

PRECEDENT VIII.

STATUTORY FORM OF VESTING ASSENT BY PERSONAL REPRESENTATIVES.

3. The said E. F. and G. H. are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

4 and 5. [*Same as 3 and 4 in Form No. 2*] (*s*).

As witness, &c. (*t*).

(*s*) *I.e.* Form No. 2 in the First Schedule to the S. L. Act, 1925. These clauses refer (1) to additional or larger powers; (2) to the person nominated to appoint new trustees. See Forms of Vesting Deeds under Settlements.

(*t*) The following note is here added to the statutory Form :—

"The expression 'conveyance' includes an assent, but an assent will relate back to the death unless a contrary intention appears.

"An assent will not be properly postponed merely because death duty remains to be paid. The representatives have only to be satisfied (*e.g.* where the tenant for life has directed payment out of capital money or has executed a mortgage for raising the money as and when an instalment becomes due) that the duty will be paid."

It may be noted that the estate vested in the personal representatives is in the nature of a trust estate, and does not form part of the assets of the deceased tenant for life. Different considerations arise in the case of a tenant in tail in possession who by will disposes of his interest under sect. 176 of the L. P. Act, 1925 : see Wills, General Remarks. Even in the latter case, if family charges remain, the land may still remain "settled land," and a "vesting assent" may be necessary.

BILLS OF SALE.

General Remarks.

The law as to bills of sale in England is now mainly regulated by the B. S. Acts, 1878 and 1882. The B. S. Act, 1882, applies only to bills of sale given by way of security for the payment of money; but there is no such distinction in the B. S. Act, 1878. The B. S. Acts, 1890 and 1891, relate solely to securities on imported goods. As to the distinction between a bill of sale and a pledge of chattels with delivery of possession, see *Ex parte Hubbard* (1886), 17 Q. B. D. 690; *Dublin, &c., Co.* v. *Doherty*, [1914] A. C. 823, at p. 854; *Kruse* v. *Seeley*, [1924] 1 Ch. 136, 144. As to a carrier's lien, see *Great Eastern Railway Co.* v. *Lord's Trustee*, [1909] A. C. 109. As to hire-purchase agreements generally, see *Helby* v. *Matthews*, [1895] A. C. 471; *McEntire* v. *Crossley*, [1895] A. C. 457; *Maas* v. *Pepper*, [1905] A. C. 102; *Brooks* v. *Beirnstein*, [1909] 1 K. B. 98; *Re Morrison*, [1914] 1 Ch. 50; *Johnson* v. *Rees* (1915), 84 L. J. K. B. 1276; *Lewis* v. *Thomas*, [1919] 1 K. B. 319; *British Railway, &c., Co.* v. *Kahn* (1921), W. N. 52. An agreement to sell a growing crop is within the exception of a transfer of goods within the ordinary course of business: *Stephenson* v. *Thomson*, [1924] 2 K. B. 240. Debentures of an incorporated company creating a floating charge are not within the B. S. Act, 1878; and they are expressly excluded from the operation of the B. S. Act, 1882, by sect. 17: *Re Standard Manufacturing Co.*, [1891] 1 Ch. 627; *Richards* v. *Kidderminster*, [1896] 2 Ch. 212; *Clark* v. *Balm*, [1908] 1 K. B. 667. Compare *National, &c., Bank* v. *Charnley*, [1924] 1 K. B. 431. But as to an unincorporated society, see *Re North Wales, &c., Society*, [1922] 2 Ch. 340. An agreement for a marriage settlement is within the exception of "marriage settlements" in sect. 4 of the B. S. Act, 1878 (*Wenman* v. *Lyon & Co.*, [1891] 2 Q. B. 192); and also a post-nuptial settlement made in pursuance of an ante-nuptial covenant (see *Clough* v. *Samuel*, [1905] A. C. 442; *Ex parte Salaman*, [1910] 2 K. B. 1049), but voluntary settlements must be registered: see Vaizey on Settlements (1887), pp. 109, 110. As to an alleged sale of furniture by husband to wife, see *Re Lavey* (1919), B. & C. R. 116; and as to a gift of furniture by husband to wife, see *French* v. *Gething*, [1922] 1 K. B. 236; *Harrods*,

Bills of sale generally.

Pledge.

Carrier's lien.

Hire-purchase agreements.

Ordinary course of business.

Debentures.

Settlements.

Husband and wife.

Agreement for lien on chattels.

Ltd. v. *Stanton*, [1923] 1 K. B. 516. An agreement for a lien on stock-in-trade to secure the purchase-money of a business was held to require registration as a bill of sale in *Coburn* v. *Collins* (1887), 35 Ch. D. 373 : see *McEntire* v. *Crossley*, [1895] A. C. 457. So also an agreement to execute a bill of sale, as it confers a right in equity to a contingent charge : *Shears & Sons, Ltd.* v. *Jones*, [1922] 2 Ch. 802. And a letter to a bank from a motor car owner authorising the repairer of the car to hold it to the order of the bank was held to be a bill of sale : *National Provincial Bank, &c.* v. *Lindsell*, [1922] 1 K. B. 21. But a letter of trust to a bank to hold bills of lading and their proceeds on account of the bank was held not to be a bill of sale : *Re Allester, Ltd.*, [1922] 2 Ch. 211. In *Pulbrook* v. *Ashby & Co.* (1887), 56 L. J. (N.S.) Q. B. 376 (approved in *Stevens* v. *Marston* (1890), W. N. 193; 60 L. J. Q. B. 192, and *Re Roundwood Colliery Co.*, [1897] 1 Ch. 373), a power of distress reserved to the lessor in an agreement for a lease of a public-house for the recovery of money due for liquor which should have been supplied by him to the lessee was held void, the agreement not having been registered as a bill of sale. The distinction was pointed out between powers of distress reserved by a lessor in respect of matters outside the relationship of landlord and tenant and the like powers reserved for the *bona fide* object of securing payment of rent, in which case they are outside the B. S. Acts altogether : see also L. P. Act, 1925, sect. 190, sub-sect. (1). The question as to how far an attornment clause in a mortgage is still within sect 6. of the B. S. Act, 1878, having regard to sect. 189, sub-sect. (1) of the L. P. Act, 1925, will be found to be discussed in MORTGAGES, General Remarks. As to bills of sale by partners and other joint owners, see *Re Bainbridge* (1878), 8 Ch. D. 218; *Ex parte Brown* (1878), 9 Ch. D. 389; *Ex parte Popplewell* (1882), 21 Ch. D. 73; *Saunders* v. *White*, [1902] 1 K. B. 472. A transfer of a registered bill of sale will require registration, notwithstanding sect. 10, sub-sect. (3) of the B. S. Act, 1878, if, in effect, it is a new mortgage : see *Marshall and Snelgrove* v. *Gower*, [1923] 1 K. B. 356. The provisions in sect. 114 of the L. P. Act, 1925, as to transfers of mortgages do not extend to a transfer of a bill of sale of chattels by way of security : sub-sect. (5).

Powers of distress.

Attornment clause in mortgage.

Bills of sale by partners.

Transfer of bill of sale.

The statutory form.

Under sect. 9 of the B. S. Act, 1882, "a bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void" (not merely, it should be observed, against persons other than the grantor), "unless made *in accordance with* the form in the Schedule to this Act annexed" : see Precedent I., which is a copy of this form. The

form applies to personal chattels only, and a bill of sale which includes chattels real is not in accordance with the form, and is therefore void as regards the personal chattels under this section. *Cochrane* v. *Entwhistle* (1890), 25 Q. B. D. 116; *Swanley Coal Co.* v. *Denton*, [1906] 2 K. B. 873, where the inclusion of a title deed in the schedule was held insufficient to create a charge on the land to which it related, and the bill was upheld by a majority of the Court of Appeal. It has been laid down that the general intention of the Act is that the loan of money upon the security of a bill of sale shall be a simple transaction (see *Melville* v. *Stringer* (1884), 13 Q. B. D. 392), and that the instrument will be obnoxious to the above section if anything substantial is subtracted from the statutory form, or anything actually inconsistent added to it (*Davis* v. *Burton* (1883), 11 Q. B. D. 537, 540); if it does not produce the precise legal effect, neither more nor less, of that form, or the variance is such as might reasonably deceive those for whose benefit the form is provided : *Ex parte Stanford* (1886), 17 Q. B. D. 259. It must be so framed that its nature and meaning shall be clear and intelligible to persons of ordinary understanding without technical knowledge, and that the borrower shall be able to know the nature of the security he has given, and a new proposed creditor, by searching the register, to understand the position of the borrower (*Melville* v. *Stringer* (1884), 13 Q. B. D. 392); it must not be a puzzle to anyone who reads it (*Furber* v. *Cobb* (1887), 18 Q. B. D. 494, 502), or so intricate or prolix in its recitals or otherwise as to be obscure : 17 Q. B. D. 264, 274. See also *Peace* v. *Brookes*, [1895] 2 Q. B. 451, where a stipulation intended to secure for the grantee a monopoly of a part of the grantor's custom was held to invalidate the bill; *Saunders* v. *White*, [1902] 1 K. B. 472, where a bill given by two grantors not having a joint interest, but each being a sole owner of a portion of the goods, was held to be not in accordance with the form; *Smith* v. *Whiteman*, [1909] 2 K. B. 437, where printed conditions were handed to the grantee and made part of the bargain, and the will was declared void; see also *Hall* v. *Whiteman*, [1912] 1 K. B. 683; *Brandon Hill* v. *Lane*, [1915] 1 K. B. 250; and for a general discussion of the statutory form, *Thomas* v. *Kelly* (1888), 13 App. Cas. 506, 516, 519.

Description of grantor and grantee.

The residence and occupation of the grantor and grantee, and of every attesting witness, must be correctly described in the deed, and also in the affidavit required by sect. 10, sub-sect. (2) of the B. S. Act, 1878. In *Dolcini* v. *Dolcini*, [1895] 1 Q. B. 898, Cave, J., decided, however, that it was not necessary to set out the grantor's residence and description in the body of

the deed, as well as in the affidavit; but compare the later case of *Altree* v. *Altree*, [1898] 2 Q. B. 267. If the grantor has more than one residence, or more than one business or occupation (*Re Fitzpatrick* (1886), 19 L. R. Ir. 206), it has been held that all should be described : *Wallis* v. *Smith* (1882), W. N. 77; but see *Ex parte Knightly* (1882), 51 L. J. Ch. 823; 30 W. R. 844; *Greenham* v. *Child* (1889), 24 Q. B. D. 29, where the mention of one of several places of business was held sufficient in the affidavit. See also, as to the description of the grantor, *Ex parte National Mercantile Bank*; *Re Haynes* (1880), 15 Ch. D. 42; *Castle* v. *Downton* (1879), 5 C. P. D. 56; *Cooper* v. *Davis* (1884), 32 W. R. 329; *Ex parte Popplewell* (1882), 21 Ch. D. 73; *Downs* v. *Salmon* (1888), 20 Q. B. D. 775; *Lee* v. *Turner* (1888), 20 Q. B. D. 773; *Sharp* v. *McHenry* (1887), 38 Ch. D. 427; *Kemble* v. *Addison*, [1900] 1 K. B. 430, where a bill of sale granted by a married woman so described was held bad because she had an occupation which was not stated; and *Stokes* v. *Spencer*, [1900] 2 K. B. 483, where the bill was held not to be invalidated by the grantor's name being wrongly stated; *Barron* v. *Potter*, [1915] 3 K. B. 593, where a Baptist minister so described had an office where he carried on a business and the bill was held void. See also *Re Boddington* (1915), 84 L. J. K. B. 2119. And as to the description of a grantee, *Simmons* v. *Woodward*, [1892] A. C. 100; and *Altree* v. *Altree*, [1898] 2 Q. B. 267, where the bill was held void under sect. 9 of the B. S. Act, 1882, because the address and description of the grantee were not given.

Partners or joint creditors (but not several separate creditors) may be grantees in one and the same bill of sale : *Melville* v. *Stringer* (1884), 13 Q. B. D. 392.

Statement of the consideration.

Sect. 8 of the B. S. Act, 1882, requires that the consideration shall be " truly set forth " in the bill of sale; otherwise it will be void in " respect of the personal chattels comprised therein " : see *Heseltine* v. *Simmons*, [1892] 2 Q. B. 547. It is sufficient if the legal, or mercantile, or business effect of the facts is stated with substantial accuracy, though the details of the transaction are not set forth : *Credit Co.* v. *Pott* (1880), 6 Q. B. D. 295, 299; *Ex parte Johnson* (1884), 26 Ch. D. 338, 348; *Richardson* v. *Harris* (1889), 22 Q. B. D. 268; *Darlow* v. *Bland*, [1897] 1 Q. B. 125.

A bill of sale made or given in consideration of any sum under £30 is now void : sect. 12 of the B. S. Act, 1882. See *Davis* v. *Usher* (1884), 12 Q. B. D. 490; *Darlow* v. *Bland*, [1897] 1 Q. B. 125; *London, &c., Co.* v. *Jones*, [1914] 1 K. B. 147.

It has been held that the consideration is truly set forth as

"paid to the grantor" where it is by his direction applied in satisfying existing debts due from him to third persons (*Hamlyn* v. *Betteley* (1880), 5 C. P. D. 327; *Ex parte Firth* (1882), 19 Ch. D. 419; *Re Cann* (1884), 13 Q. B. D. 36), or to the grantee (*Ex parte Charing Cross Bank* (1880), 16 Ch. D. 35, 38; *Ex parte Bolland* (1882), 21 Ch. D. 543, 549); and that a collateral agreement as to the application of the consideration in payment of such debts need not be stated: *Ex parte National Mercantile Bank* (1880), 15 Ch. D. 42. See also *Thomas* v. *Searles*, [1891] 2 Q. B. 408, where the collateral agreement was that out of the sum advanced the grantor should pay off an existing debt due to the grantee and partly secured by a prior bill of sale; and *Heseltine* v. *Simmons*, [1892] 2 Q. B. 547, where the agreement was that the bill should not be made available until the grantee had exhausted certain other securities for the advance. But it would seem that if any part of the consideration stated to be paid to the grantor be in fact paid to or retained by the grantee for commission or expenses generally, the bill of sale will be void: *Hamilton* v. *Chaine* (1881), 7 Q. B. D. 319; see *Ex parte Charing Cross Bank* (1880), 16 Ch. D. 35; *Ex parte Rolph* (1881), 19 Ch. D. 98; *Ex parte Firth* (1882), 19 Ch. D. 419. These cases show that the distinction is between the application of the consideration in payment of debts existing independently of the transaction of loan, and its application in payment of debts which arise out of the transaction itself. In *Ex parte Challinor* (1880), 16 Ch. D. 260, where the grantee retained part of the consideration to pay solicitor's costs of preparing the deed, a further sum for costs previously incurred, and an auctioneer's fee for valuing the property with a view to the loan, the statement of the whole consideration as "paid to" the grantor was held not to vitiate the bill of sale. In *Ex parte Firth* (1882), 19 Ch. D. 419, however, Jessel, M.R., questioned the soundness of this decision if it was intended to cover debts which do not become such until after the transaction has been completed; and Brett, L.J., limited its authority to cases in which the debt is existing at the time of the execution of the bill of sale: see *London, &c., Co.* v. *Jones*, [1914] 1 K. B. 147. The debt cannot be truly said to be included in money paid to the grantor, unless it is a debt due and payable irrespective of the agreement for payment of the money which is in question: *Richardson* v. *Harris* (1889), 22 Q. B. D. 268, 273, where it was held that the consideration was not truly set forth as paid to the grantor, and that the bill was void, the facts being that by agreement with the grantor part of the money was retained by the grantee in satisfaction of acceptances (then running)

given by the grantor to the grantee, a sum to be paid for hire of furniture assigned by the bill, and a sum for expenses of the transaction. This case was distinguished in *Re Wiltshire*, [1900] 1 Q. B. 96, where a part of the money paid by the grantee was by agreement applied in retiring a promissory note upon which both grantor and grantee were liable, and the bill was held good, and was followed in *Parsons* v. *Equitable, &c., Co.*, [1916] 2 Ch. 527. In *Collis* v. *Tuson* (1882), 46 L. T. 387, the consideration set forth as paid to the grantor was the sum actually so paid, being the amount of the advance after deducting interest and expenses, and the bill was held good for the whole advance. But a bill made in consideration of a sum expressed to be "now owing" to the grantee was held void where the sum represented *unpaid* acceptances (*Mayer* v. *Mindlevich* (1888), 59 L. T. 400), and where there was only a liability to pay the sum by instalments at future dates: *Darlow* v. *Bland*, [1897] 1 Q. B. 125. The consideration is truly set forth as "*now* paid," although it consists of a pre-existing debt: *Credit Co.* v. *Pott* (1880), 6 Q. B. D. 295; see *Ex parte Johnson* (1884), 26 Ch. D. 338; *Ex parte Allam* (1884), 14 Q. B. D. 43, where a fresh bill was substituted for one which was invalid; and see *Ex parte Nelson* (1887), 35 W. R. 264; *Re Rouard* (1916), 85 L. J. K. B. 393. And as to what is "payment" generally, see *Re Romer & Haslam*, [1893] 2 Q. B. 286; *Re Somerset*, [1894] 1 Ch. 231; *La Roche* v. *Beauchemin*, [1897] A. C. 358; *North Sydney, &c., Co.* v. *Higgins*, [1899] A. C. 263. The consideration is not truly set forth where the bill does not show on its face the true agreement, but is dependent for its real effect on some other instrument: *Sharp* v. *McHenry* (1887), 38 Ch. D. 427; *Parsons* v. *Equitable, &c., Co.*, [1916] 2 Ch. 527.

Covenants for title.

The insertion of the words "as beneficial owner" (or any other words which imply statutory covenants) would render the bill of sale void: *Ex parte Stanford* (1886), 17 Q. B. D. 259.

Parcels.

The B. S. Act, 1882, provides (sect. 4) that every bill of sale shall have annexed thereto, or written thereon, a schedule containing an inventory of the personal chattels comprised in the bill of sale; and save as thereinafter mentioned (see sect. 6) shall have effect only in respect to the personal chattels specifically described in the said schedule, and *except as against the grantor* shall be void in respect of (sect. 4) any personal chattels not so specifically described, and (sect. 5) in respect of any personal chattels specifically described in the schedule, of which the grantor was not the true owner at the time of the execution of the bill of sale (see *Tuck* v. *Southern Counties Deposit Bank* (1889), 42 Ch. D. 471); but (sect. 6) nothing contained in the

foregoing sections of the Act (that is, in effect, sects. 4 and 5) shall render a bill of sale void in respect of (1) any growing crops separately assigned or charged (*i.e.*, apart from any interest in the land : *Roberts* v. *Roberts* (1884), 13 Q. B. D. 794, 806; where such crops were actually growing at the time when the bill of sale was executed); (2) any fixtures separately assigned or charged, and any plant or trade machinery, where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule. As to the meaning of "plant" in sub-sect. (2), see *London, &c., Co.* v. *Creasey*, [1897] 1 Q. B. 768. Under the B. S. Act, 1878 (sect. 5), trade machinery is "personal chattels," and includes all machinery used in or attached to any factory or workshop, except the fixed motive powers and the steam, gas, and water pipes.

Meaning of "true owner";

Where a bill of sale is given, not by way of absolute assignment (as in *Tuck* v. *Southern, &c., Bank* (1889), 42 Ch. D. 471), but by way of mortgage to secure a loan, the grantor is still the "true owner" of the goods within sect. 5 of the B. S. Act, 1882, to the extent of his interest in the equity of redemption, for the purpose of giving a fresh bill of sale as security for a further advance : *Thomas* v. *Searles*, [1891] 2 Q. B. 408. And as to the meaning of the words "true owner," see *Walrond* v. *Goldmann* (1886), 16 Q. B. D. 121, where a bill of sale executed by a wife equitably entitled to the goods under her marriage settlement was held valid : see also *Harrods, Ltd.* v. *Stanton*, [1923] 1 K. B. 516; *Westen* v. *Fairbridge*, [1923] 1 K. B. 667. And see *Re Tamplin* (1890), W. N. 48, where the bill was executed by one partner; and *Re Sarl*, [1892] 2 Q. B. 591, that the words included a legal owner who was in fact a trustee for another. As to two persons signing as grantor, see *Gordon* v. *Goldstein*, [1924] 2 K. B. 779.

—of "specific description";

A mere general description in the schedule (*e.g.*, "household furniture and effects") is not enough; there must be an inventory describing the chattels as business men would describe them (*Roberts* v. *Roberts* (1884), 13 Q. B. D. 794, 806); but the bill of sale is not vitiated by the omission to mention the place in which the goods are situate : *Ex parte Hill* (1886), 17 Q. B. D. 74. The description must be sufficient to identify the particular chattels, so as to separate them from other things of the same class, and should be such as is usual in inventories made for business purposes with regard to the particular subject-matter : *Witt* v. *Banner* (1887), 20 Q. B. D. 114, 118; see *Carpenter* v.

Deen (1889), 23 Q. B. D. 566; *Hickley* v. *Greenwood* (1890), 25 Q. B. D. 277; *Thomas* v. *Kelly* (1888), 13 App. Cas. 506; *Davidson* v. *Carlton Bank*, [1893] 1 Q. B. 82; *Davies* v. *Jenkins*, [1900] 1 Q. B. 133, where horses and cows were described merely by number. Future or after-acquired personal chattels are not capable of such specific description as is required by the B. S. Act, 1882, so that a bill of sale which includes such chattels in the schedule must be void, except as against the grantor, in respect of them; and, as the Act requires that the schedule to the deed shall, and the body of the deed shall not, contain the description of the goods, a bill of sale purporting to assign after-acquired chattels is altogether void (*i.e.*, it comes within sect. 9, and not merely within sects. 4 and 5) if the reference to them is contained in the body of the deed, and not in the schedule only: *Thomas* v. *Kelly* (1888), 13 App. Cas. 506; followed in *Hadden & Co.* v. *Oppenheim* (1889), 60 L. T. 962; and see *Coates* v. *Moore*, [1903] 2 K. B. 140, as to replacement of worn-out chattels. But though a bill of sale be void in respect of "personal chattels" comprised in it, it may be a valid deed in respect of other property not within the scope of the Acts, if the security is severable: *Re Burdett* (1888), 20 Q. B. D. 310; *Re Isaacson*, [1895] 1 Q. B. 333; and compare *National Bank of Australasia, Ltd. and J. Falkingham & Sons*, [1902] A. C. 585.

After-acquired chattels.

Meaning of "trade machinery."

If a mortgagee of land with trade machinery upon it intends to have power to sell the machinery apart from the land, he must take a bill of sale of the machinery: *Re Yates* (1888), 38 Ch. D. 112; *Climpson* v. *Coles* (1889), 23 Q. B. D. 465; *Small* v. *National Provincial Bank*, [1894] 1 Ch. 686; *Re Brooke*, [1894] 2 Ch. 600; *Johns* v. *Ware*, [1899] 1 Ch. 359. But in a mortgage of leaseholds with fixtures, the right of the mortgagee to remove the fixtures at the end of the tenancy does not render the mortgage liable to registration as a bill of sale: *Re Rogerstone, &c., Co.*, [1919] 1 Ch. 110.

Amount secured.

The principle of the form is that a fixed sum shall be stated in the deed in figures and in direct terms, and that that sum, with rateable interest, shall be recovered by the holder: *Davis* v. *Burton* (1883), 11 Q. B. D. 537, 540. The deed must specify a definite sum secured payable at a definite time, or at least the time must be defined by reference to specified events (*Bianchi* v. *Offord* (1886), 17 Q. B. D. 484, 487), and not be dependent upon a contingency which may or may not happen: *Hughes* v. *Little* (1886), 18 Q. B. D. 32, 36. Therefore bills of sale have been held void when the covenant was to pay "on demand" (*Hetherington* v. *Groome* (1884), 13 Q. B. D. 789; *Mackay* v. *Merritt* (1886), 34 W. R. 433), or seven days after

demand (*Sibley* v. *Higgs* (1885), 15 Q. B. D. 619), or to repay sums which might be paid by the grantee under a guarantee and promissory note: *Hughes* v. *Little* (1886), 18 Q. B. D. 32. They have been held good where the covenant was to repay by unequal instalments (*Ex parte Rawlings* (1887), 18 Q. B. D. 489; *Re Bargen*, [1894] 1 Q. B. 444, where the instalments included interest as well as principal, and were spread over an indefinite period; *Re Wood*, [1894] 1 Q. B. 605); to repay the whole principal sum at a date named together with the interest *then due* (*Watkins* v. *Evans* (1887), 18 Q. B. D. 386); to repay "on or before" a fixed day (*De Braam* v. *Ford*, [1900] 1 Ch. 142); and where it was provided that, on default in payment of any monthly instalment of principal, the whole principal sum, with the interest *then due*, should became payable (*Lumley* v. *Simmons* (1887), 34 Ch. D. 698; but *contra* where such a provision has the effect of making interest not yet due become immediately payable: *Roe* v. *Mutual Loan Association* (1887), 56 L. T. 631).

Interest to be rateable.

The interest must be rateable and capable of being calculated up to the time when the principal shall be called in, so that the grantor may know what rate of interest he is to pay, and it must not be capitalised or be a lump sum (*Davis* v. *Burton* (1883), 11 Q. B. D. 537; *Myers* v. *Elliott* (1886), 16 Q. B. D. 526; *Sharp* v. *McHenry* (1887), 38 Ch. D. 427, 455; *Blankenstein* v. *Robertson* (1890), 24 Q. B. D. 543); but it may be payable in unequal amounts (*Goldstrom* v. *Tallerman* (1886), 18 Q. B. D. 1; and see *Edwards* v. *Marston*, [1891] 1 Q. B. 225; *Re Bargen*, [1894] 1 Q. B. 444; and *Weardale Coal and Iron Co.* v. *Hodson*, [1894] 1 Q. B. 589); or stated as so much in the £1 per month: *Lumley* v. *Simmons* (1887), 34 Ch. D. 698; explained in *Re Wood*, [1894] 1 Q. B. 605. See *Burchell* v. *Thompson*, [1920] 2 K. B. 80, where "per annum" was omitted from the filed copy. And the principal and interest may be made payable in equal instalments of a given amount, consisting partly of principal and partly of interest (*Linfoot* v. *Pockett*, [1895] 2 Ch. 835; *Mourmand* v. *Le Clair*, [1903] 2 K. B. 216); with interest on instalments in arrears: *Rosefield* v. *Provincial, &c., Bank*, [1910] 2 K. B. 781. As to interest after sale, see *West* v. *Diprose*, [1900] 1 Ch. 337. As to the importance of the receipt clause, see *Burchell* v. *Thompson*, [1920] 2 K. B. 80.

Where a bill of sale is absolutely void under sect. 9 of the B. S. Act, 1882, for non-compliance with the form, the covenant for payment, being part of the bill of sale, is void: *Davies* v. *Rees*, 17 Q. B. D. 408; *Smith* v. *Whiteman*, [1909] 2 K. B.

441. But an action for money had and received may lie for the money lent (with interest at a reasonable rate) based on the verbal agreement or negotiations prior to the execution of the bill of sale : *Wilkins* v. *New Saville Securities* (1922), 39 T. L. R. 85; *Bradford Advance Co.* v. *Ayers*, [1924] W. N. 152. So, also, where a bill of sale comprises not only personal chattels but also other chattels not within the definition of "personal chattels" in the B. S. Act, 1878, and is void as to the personal chattels for non-compliance with the form, it is not necessarily void as to the other property comprised in it. See *Re Burdett* (1888), 20 Q. B. D. 310; *Re Isaacson*, [1895] 1 Q. B. 333; *National Bank of Australasia and J. Falkingham & Sons*, [1902] A. C. 585; *Re N. Wales, &c., Socy.*, [1922] 2 Ch. 340. And see *Mumford* v. *Collier*, 25 Q. B. D. 279.

Power of sale.

The form given in the Schedule to the B. S. Act, 1882, does not contain or expressly authorise the insertion of a power of sale; and it is considered that, regard being had to the decisions (see *Hetherington* v. *Groome* (1884), 13 Q. B. D. 789), no such power should be expressed. It was held by the full Court of Appeal (diss. Fry, L.J.), in *Re Morritt* (1886), 18 Q. B. D. 222, that under the B. S. Act, 1882 (see sect. 13), there is an implied power to sell the goods at the expiration of five days after they have been seized; that the power of sale which was impliedly conferred by sect. 19 of the C. Act, 1881 (see now L. P. Act, 1925, sect. 101), is not required, and is not incorporated in bills of sale subject to the B. S. Act, 1882; and (notwithstanding some expressions of opinion in *Watkins* v. *Evans* (1887), 18 Q. B. D. 386) this view of the law was confirmed by *Calvert* v. *Thomas* (1887), 19 Q. B. D. 204. And see generally as to the power of sale of a mortgagee of personal chattels, *Deverges* v. *Sandeman, Clark & Co.*, [1902] 1 Ch. 579.

A provision exonerating any purchaser from inquiring whether default had been made in payment was held to avoid the bill of sale in *Blaiberg* v. *Parsons* (1886), 17 Q. B. D. 336, and *Blaiberg* v. *Beckett* (1886), 18 Q. B. D. 96.

The implied power of sale above mentioned carries with it implied trusts to retain out of the sale money the principal and interest owing, and also costs and expenses incurred in entry, in discharging any distress, execution, or other incumbrance affecting the goods, in seizing and keeping possession of them and in their removal, warehousing, valuation, and sale; and therefore such trusts may be expressly set forth in the deed : *Consolidated Credit, &c., Corpn.* v. *Gosney* (1885), 16 Q. B. D. 24; *Ex parte Rawlings* (1887), 18 Q. B. D. 489; see *Lumley* v.

Simmons (1887), 34 Ch. D. 698. But though such provisions may be harmless, it seems best to omit them as superfluous.

Excessive powers.

The bill of sale is, however, avoided if the powers are too wide, *e.g.*, to pay and retain expenses attending the sale "*or otherwise* incurred in relation to the security" (*Calvert* v. *Thomas* (1887), 19 Q. B. D. 204); or that the grantee may retain his commission as auctioneer (*Furber* v. *Cobb* (1887), 18 Q. B. D. 494); or that he may have the goods valued and may purchase them at such valuation: *Lyon* v. *Morris* (1887), 19 Q. B. D. 139.

As to the effect of a sale under the power in putting an end to the bill of sale, see *Cookson* v. *Swire* (1884), 9 App. Cas. 653.

Causes of seizure.

The causes of seizure are stated in sect. 7 of the B. S. Act, 1882, and are: (1) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and *necessary* (not "convenient or useful" to the grantee: *Bianchi* v. *Offord* (1886), 17 Q. B. D. 484, 487) for maintaining the security (see *Furber* v. *Cobb* (1887), 18 Q. B. D. 494); (2) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes; (3) If the grantor shall fraudulently (see *Furber* v. *Cobb* (1887), 18 Q. B. D. 494, 505) either remove or suffer the said goods or any of them to be removed from the premises (*Harrison* v. *Shallis* (1909), 25 T. L. R. 664); (4) If the grantor shall not, without reasonable excuse (see *Ex parte Cotton* (1883), 11 Q. B. D. 301; *Ex parte Wickens*, [1898] 1 Q. B. 543), upon demand in writing (not verbal: *Davis* v. *Burton* (1883), 11 Q. B. D. 537, 542) by the grantee produce to him his last receipts for rent, rates, and taxes; and (5) If execution shall have been levied against the goods of the grantor under any judgment at law. But the grantor may, within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court or to a judge thereof in chambers, and such Court or judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just: see *Ex parte Cotton* (1883), 11 Q. B. D. 301; and *Ex parte Ellis*, [1898] 2 Q. B. 79. When the right to seize has arisen, the grantor has no right of action for trespass against the grantee for seizing the goods, for the right to possession is in the grantee, and the only thing left to the grantor is his right to redeem: *Johnson* v. *Diprose*, [1893] 1 Q. B. 512. Sect. 7 renders it

unnecessary to insert express powers of seizure, and they are better omitted : see *Re Morritt* (1886), 18 Q. B. D. 222. Under sect. 13, personal chattels seized or taken possession of under any bill of sale are not to be removed or sold until after the expiration of five days from the seizure or taking possession.

Additions to statutory form.

The statutory form suggests the insertion of "terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security." The term "defeasance" in this connection has been held to mean "realisation" : *Consolidated Credit, &c., Corpn.* v. *Gosney* (1887), 16 Q. B. D. 24. See also as to what is a "defeasance," *Ex parte Popplewell* (1882), 21 Ch. D., at p. 31; *Blaiberg* v. *Beckett* (1886), 18 Q. B. D. 96; *Heseltine* v. *Simmons*, [1892] 2 Q. B. 547; *Pettitt* v. *Lodge*, [1908] 1 K. B. 744; *Hall* v. *Whiteman*, [1912] 1 K. B. 683; *Lester* v. *Hickling*, [1916] 2 K. B. 302; *Graham* v. *Hart*, [1917] 1 K. B. 201.

It has been remarked by Lindley, L.J. (*Davis* v. *Burton* (1883), 11 Q. B. D. 537, 541), that the statutory form is framed with reference to the provisions of sect. 7 (see also 13 App. Cas., at p. 516); and having regard to sect. 9 of the B. S. Act, 1882, which avoids bills of sale not made in accordance with the form, the general rule for determining what additions may safely be made to the statutory form appears to be that only such covenants or provisions should be inserted as can be properly said to be "for the maintenance or defeasance of the security"; and further, that any covenant or provision inserted, even though it fall within the permitted class as thus defined, must not be so framed as either expressly or by implication to carry with it a power upon breach of it to seize or take possession of the goods, unless it be a provision "*necessary* for maintaining the security," within the meaning of sect. 7, sub-sect. (1) of the B. S. Act, 1882, or to be of such a nature that its breach would give rise to some cause of seizure specified in that section. A bill of sale containing any provision which does not satisfy both these conditions is likely to be held absolutely void under sect. 9; and it has been laid down that this result is not prevented by the insertion of the express provision, in the terms of the statutory form, limiting the power of seizure to causes specified in sect. 7 : see *Ex parte Pearce* (1883), 25 Ch. D. 656; *Ex parte Stanford* (1886), 17 Q. B. D. 259, 270; *Bianchi* v. *Offord* (1886), 17 Q. B. D. 484; *Furber* v. *Cobb* (1887), 18 Q. B. D. 495, 507; *Real and Personal Advance Co.* v. *Clears* (1888), 20 Q. B. D. 304.

It has, however, been judicially stated that a bill of sale will not necessarily be avoided by the insertion of terms agreed to

for the maintenance of the security, although not "necessary for maintaining the security," provided that no power is given to seize or take possession of the goods for breach of such terms : *Topley* v. *Corsbie* (1888), 20 Q. B. D. 350; and see *per* Lord Esher, M.R., *Ex parte Stanford* (1886), 17 Q. B. D., at p. 264. But it must be remembered that there is a danger in the mere prolixity or elaboration arising from the insertion of numerous provisions, even though each of them taken by itself may be unobjectionable.

Provisions held not to invalidate bill of sale.

The following provisions have been held not to invalidate the bill of sale :—Covenants to pay insurance premiums, or rent, rates, and taxes, and produce receipts (*Cartwright* v. *Regan*, [1895] 1 Q. B. 900), that the grantee on default of the grantor may pay premiums or rent, rates, and taxes, and that such payments shall be a charge on the goods (*Hammond* v. *Hocking* (1884), 12 Q. B. D. 291; *Ex parte Stanford* (1886), 17 Q. B. D. 259; *Goldstrom* v. *Tallerman* (1886), 18 Q B. D. 1; *Watkins* v. *Evans* (1887), 18 Q. B. D. 386; *Furber* v. *Cobb* (1887), 18 Q. B. D. 494); but the bill of sale will be void if power, express or implied, is conferred to seize for breach of such covenant, or for recovery of such payments (*Bianchi* v. *Offord* (1886), 17 Q. B. D. 484; *Real and Personal Advance Co.* v. *Clears* (1888), 20 Q. B. D. 304, where the moneys were "to be recoverable in the same manner as" the sums secured; *Topley* v. *Corsbie* (1888), 20 Q. B. D. 350; and see *Macey* v. *Gilbert* (1888) 57 L. J. Q. B. 461, where the sums in question were to be "added to and form part of the security"; and *Turner* v. *Culpan* (1888), 58 L. T. 340; 36 W. R. 278; *Re Bullock*, [1899] 2 Q. B. 517); a covenant not to remove chattels likely to be damaged by removal (*Ex parte Payne* (1887), 56 L. T. 571); a covenant to replace articles worn out (see *Coates* v. *Moore*, [1903] 2 K. B. 140); a covenant not to remove the chattels, even omitting the qualification "fraudulently" (see sect. 7, sub-sect. (3) of the B. S. Act, 1882; *Furber* v. *Cobb* (1887), 18 Q. B. D. 494; *Ex parte Pope* (1889), 60 L. T. 428; but see *Ex parte Pearce* (1883), 25 Ch. D. 656); a power to seize if the grantee should do or suffer anything whereby he should become a bankrupt (*Ex parte Allam* (1884), 14 Q. B. D. 43; *Ex parte Pope* (1889), 60 L. T. 428; but otherwise where the words were "become *liable* to be made bankrupt"; *Davis* v. *Burton* (1883), 11 Q. B. D. 537; *Ex parte Pearce* (1883), 25 Ch. D. 626); or "take the benefit of any Bankruptcy Act" (*Gilroy* v. *Bowey* (1888), 59 L. T. 223); a covenant for further assurance by the grantor and persons "claiming under him" (*Ex parte Rawlings* (1887), 18 Q. B. D. 489; but otherwise where the covenant

was extended to "every other person claiming any interest": *Liverpool, &c., Socy.* v. *Richardson* (1886), 2 T. L. R. 602; 30 Sol. J. 433). It is better to omit any covenant for further assurance.

Provisions held to invalidate bill of sale.

The bill of sale has been held to be invalidated by the insertion of covenants by the grantor to pay all interest on any mortgages of the premises on which the goods were or should at any time be; and that the bill of sale should be retained by the grantee after payment off (*Watson* v. *Strickland* (1887), 19 Q. B. D. 391); and by the insertion of covenants for the purpose of securing to the grantee a portion of the grantor's custom: *Peace* v. *Brookes*, [1895] 2 Q. B. 451. And it must contain the whole transaction, and show the whole contract on its face (*Sharp* v. *McHenry* (1887), 38 Ch. D. 427, 453); therefore it is invalid if it contains a covenant to perform the covenants in a recited indenture, such covenants not being set forth in the bill itself (*Lee* v. *Barnes* (1886), 17 Q. B. D. 77); or where a separate promissory note is given by the grantor, such a note being a "defeasance" which, by sect. 10, sub-sect. (3) of the B. S. Act, 1878, must be contained in the bill of sale: *Counsell* v. *London, &c., Co.* (1887), 19 Q. B. D. 512; see *Simpson* v. *Charing Cross Bank* (1886), 34 W. R. 568; but the note is valid: *Monetary Advance Co.* v. *Cater* (1888), 20 Q. B. D. 785. So where, the bill reserving simple interest, there was a contemporaneous agreement in another document not referred to in the bill and not registered as a bill of sale, for the payment of compound interest, the bill of sale was held void under sect. 10, sub-sect. (3) of the B. S. Act, 1878: *Edwards* v. *Marcus*, [1894] 1 Q. B. 587; *Hall* v. *Whiteman*, [1912] 1 K. B. 683. And in considering whether a "defeasance" or condition is within the above-mentioned sub-section, it makes no difference whether it is in favour of the grantor or the grantee. But a policy of assurance deposited as collateral security is no condition or defeasance: *Carpenter* v. *Deen* (1889), 23 Q. B. D. 566.

Attestation and registration.

The deed, to be effectual, must, under sects. 8 and 10 of the B. S. Act, 1882, be attested "by one or more credible witness or witnesses, not being a party or parties thereto"; and by sect. 10, sub-sect. (2) of the B. S. Act, 1878, and sect. 8 of the B. S. Act, 1882, a "true copy" must be registered; and by the Administration of Justice Act, 1925, sect. 23, sub-sect. (2), additional copies shall be presented to the registrar if he so requires. As to the meaning of a "true copy," compare *Commercial Credit Co.* v. *Fulton*, [1923] A. C. 798. Under sect. 11 of the B. S. Act, 1878, such registration must be renewed

once at least every five years. The effect of omitting to re-register is, since the B. S. Act, 1882, to make the bill wholly void, even as between grantor and grantee (*Fenton* v. *Blythe* (1890), 25 Q. B. D. 417), and although under sect. 14 of the B. S. Act, 1878, the Court has power to give leave to re-register after the time has expired, it will not do so after a third person (*e.g.*, the trustee in bankruptcy of the grantor) has acquired an interest in the goods : *Re Parsons*, [1893] 2 Q. B. 122.

Sect. 10, sub-sect. (1) of the B. S. Act, 1878, which required attestation by a solicitor, is repealed by the B. S. Act, 1882, sect. 10, but the repeal does not apply to absolute bills of sale : *Casson* v. *Churchley* (1884), 53 L. J. Q. B. 335. The agent of a grantee may be a witness : *Peace* v. *Brookes*, [1895] 2 Q. B. 451. It has been held that the omission of the addresses and descriptions of the attesting witnesses renders the bill of sale void (*Parsons* v. *Brand* (1890), 25 Q. B. D. 110; *Sims* v. *Trollope*, [1897] 1 Q. B. 24); as to what is a sufficient address and description of an attesting witness, see *Bird* v. *Davey*, [1891] 1 Q. B. 29; *Simmons* v. *Woodward*, [1892] A. C. 100. The affidavit required by sect. 10, sub-sect. (2) of the B. S. Act, 1878, must not be sworn before the solicitor acting for the grantee (*Baker* v. *Ambrose*, [1896] 2 Q. B. 372; *Re Bagley*, [1911] 1 K. B. 317); it should state the residence (see *Greenham* v. *Child* (1889), 24 Q. B. D. 29) of the grantor at the date of swearing (see the form in R. S. C. 1883, App. B. 24; the similar form then in force seems to have been overlooked in *Ex parte Kahen* (1882), 21 Ch. D. 871); but the affidavit on re-registration must follow the description in the bill of sale, though erroneous : *Ex parte Webster* (1882), 22 Ch. D. 136.

Local registration.

The B. S. Act, 1882, sect. 11, which provides for local registration where the grantor is described as residing or the chattels as being in some place outside the London Bankruptcy district, is amended by sect. 23, sub-sect. (1) of the Administration of Justice Act, 1925, which requires copies of the bills, instead of abstracts of the contents of the bills, to be transmitted to the County Court Registrar. The want of local registration does not avoid the bill of sale : *Trinder* v. *Raynor* (1887), 56 L. J. Q. B. 522.

Priorities.

Two or more bills of sale comprising the same chattels have, under sect. 10, sub-sect (4) of the B. S. Act, 1878, priority according to the dates of their registration : see *Conelly* v. *Steer* (1881), 7 Q. B. D. 520; *Lyons* v. *Tucker* (1881), 7 Q. B. D. 523. But a bill of sale of goods already assigned by an unregistered deed, and delivered to the assignee, is void under sect. 5 of the B. S. Act, 1882, against all persons except the

grantor, he not being the true owner: see *Tuck* v. *Southern Counties Deposit Bank* (1889), 42 Ch. D. 471. A memorandum of equitable submortgage given by the transferee of a registered bill of sale does not require registration: *Ex parte Turquand* (1885), 14 Q. B. D. 636.

The evasion of the Act by substituting a fresh bill for an unregistered bill within the time allowed for registration is prevented by sect. 9 of the B. S. Act, 1878.

Execution by attorney.

A bill of sale may be executed by an attorney, who may be the grantee himself: see *Furnivall* v. *Hudson*, [1893] 1 Ch. 335; and compare *Re Wilson*, [1916] 1 K. B. 382, a case under the Deeds of Arrangement Act, 1914.

PRECEDENTS.

I.

Precedent I.

Bill of Sale (Statutory Form).

Statutory *form of* Bill of Sale (*a*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of ——, of the one part, and C. D., of ——, of the other part, WITNESSETH, that, in consideration of the sum of £—— now paid to A. B. by C. D., the receipt of which the said A. B. hereby acknowledges [*or whatever else the consideration may be*], HE the said A. B. doth hereby assign unto C. D., his executors, administrators, and assigns ALL AND SINGULAR the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £—— and interest thereon at the rate of —— per cent. per annum [*or whatever else may be the rate*]. AND the said A. B. doth further agree and declare that he will duly pay to the said C. D. the principal sum aforesaid, together with the interest then due, by equal —— payments of £—— on the —— day of —— [*or whatever else may be the stipulated times or time of payment*]. AND the said A. B. doth also agree with the said C. D., that he will [*here insert terms as to insurance, payment of rent or otherwise, which the parties may agree to for the maintenance or defeasance of the security*]. PROVIDED ALWAYS, that the chattels hereby assigned shall not be liable to seizure, or to be taken possession of by the said C. D. for any cause

(*a*) See General Remarks, above, as to the law generally, and especially as to the necessity for strictly following the Statutory Form. Such variations as it is believed are permissible will be found in the next Precedent.

other than those specified in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882. IN WITNESS, &c.

Signed and sealed by the said A. B. in the presence of me, E. F. [*add witness's name, address, and description*].

PRECEDENT I.

BILL OF SALE (STATUTORY FORM).

II.

BILL OF SALE *varying* STATUTORY FORM.

PRECEDENT II.

BILL OF SALE VARYING STATUTORY FORM.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*owner*], of the one part, and C. D., of, &c. [*mortgagee*], of the other part, WITNESSETH, that, in consideration of the sum of £—— now paid to the said A. B. by the said C. D. (the receipt of which the said A. B. hereby acknowledges), [*or whatever else the consideration may be*] HE the said A. B. doth hereby assign unto the said C. D., his executors, administrators, and assigns, ALL AND SINGULAR the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £—— and interest thereon at the rate of —— per cent. per annum. AND the said A. B. doth hereby covenant with the said C. D., and agree and declare that HE the said A. B. will duly pay to the said C. D. the principal sum aforesaid together with the interest then due, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year. AND FURTHER, that, so long as any money shall remain owing on the security of these presents, he the said A. B. will not remove any of the said chattels from the dwelling-house in the said schedule mentioned without the previous consent of the said C. D., except for necessary repairs, and will replace any chattels damaged or worn out with others of equal value to be included in this security. AND THAT the said C. D. may, at all reasonable times, so long as any money shall remain on this security, enter into the said dwelling-house to view the condition of the said chattels, and of any want of repair or dilapidation, to give to, or leave for, the said A. B., notice in writing, and upon such notice being given or left, the matter complained of shall be forthwith amended by the said A. B. AND FURTHER, that the said A. B. will, during the continuance of this security, keep the said chattels and all other chattels for the time being subject thereto, insured against loss or damage by fire, in the sum of £—— at the least, and will produce, on demand, the policy and the receipt for the current year's premium. AND will expend all money received by virtue of any such insurance in replacing

Assignment.

Parcels.

By way of security for the debt and interest.

Covenant to pay principal and interest.

Not to remove the furniture;

that the mortgagee may enter and view the condition;

and to insure against damage by fire;

and to expend insurance money in

PRECEDENT II.

BILL OF SALE VARYING STATUTORY FORM.

replacing articles destroyed or damaged.

or restoring the chattels destroyed or damaged [*and that in default mortgagee may insure, referring to the chattels as* "hereby assigned"]. PROVIDED ALWAYS that the chattels hereby assigned shall not be liable to seizure, or to be taken possession of by the said C. D., for any cause other than those specified in sect. 7 of the Bills of Sale Act (1878) Amendment Act, 1882. IN WITNESS, &c.

Signed and sealed by the said A. B. in the presence of me, E. F. (*add witness's name, address, and description*).

SCHEDULE—*Description of chattels at* —— [*dwelling-house*].

CONSENTS.

General Remarks.

Exercise of power subject to consent.

Generally speaking, where the exercise of a power by one person is subject to the consent of some other person, the condition must be strictly complied with : Sugden on Powers (1861), 252; Farwell on Powers (1916), 161. But obviously the importance of the consent must vary with the nature of the power, and with the effect of its exercise without such consent.

Power of advancement.

For example, where trustees have power to make an advancement of part of the capital to a reversioner, the consent of the parent who is entitled to the life interest is made a necessary condition to the exercise of the power during the lifetime of the parent, for he thereby loses the income on the capital raised.

Consent of protector.

So also a tenant in tail cannot effectually bar the entail without the consent of the protector of the settlement : Fines and Recoveries Act, 1833, sect. 34.

Change of investment.

On the other hand, in the case of a mere administrative power, such as a change of investment from one trust investment to another, the consent of the life tenant, although made a condition of the exercise of the power, is of less importance, as the trustees represent the interests of the reversioners as well as those of the life tenant, and although the trustees may incur some risk in not obtaining such consent, the transaction itself may be valid : see Dav. Prec. Conv. Vol. III., Pt. I., p. 61, and Vaizey on Settlements (1887), 362, 485.

Statutory powers remain in tenant for life notwithstanding assignment of life interest.

With regard to settled land, where a person (other than a statutory owner) who has the statutory powers of a tenant for life assigns his interest for value, these powers still remain in him, and (a) where the assignment was made before 1926, the consent of the assignee is, with certain exceptions, required, but (b) where the assignment is made after 1925, no consent is necessary, subject to some exceptions.

Under the former practice (see S. L. Act, 1882, sect. 50) the consent of the assignee was obtained, but his concurrence in a conveyance on sale could not be required : see *Re Dickin and Kelsall*, [1908] 1 Ch. 213; *Re Davies and Kent*, [1910] 2 Ch. 35. As to assignments made before 1926, the purchaser is not now concerned to see whether such consent has been obtained, but where a general or special consent to the exercise of the

statutory powers has in fact been given by an instrument in writing (see Precedents I. and II., below), it is a question whether such instrument should not be disclosed to the purchaser.

The law is now governed by sect. 104 of the S. L. Act, 1925, which is as follows :—

S. L. Act, 1925, s. 104.

104.—(1) The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exercisable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.

This subsection applies notwithstanding that the estate or interest of the tenant for life under the settlement was not in possession when the assignment was made or took effect by operation of law.

(2) A contract by a tenant for life not to exercise his powers under this Act or any of them shall be void.

(3) Where an assignment for value of the estate or interest of the tenant for life was made before the commencement of this Act, this section shall operate without prejudice to the rights of the assignee, and in that case the assignee's rights shall not be affected without his consent, except that—

(a) unless the assignee is actually in possession of the settled land or the part thereof affected, his consent shall not be requisite for the making of leases thereof by the tenant for life or statutory owner, provided the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act; and

(b) the consent of the assignee shall not be required to an investment of capital money for the time being affected by the assignment in securities authorised by statute for the investment of trust money.

(4) Where such an assignment for value is made or comes into operation after the commencement of this Act, the consent of the assignee shall not be requisite for the exercise by the tenant for life of any of the powers conferred by this Act:

Provided that—

(a) the assignee shall be entitled to the same or the like estate or interest in or charge on the land, money, or securities for the time being representing the land, money, or securities comprised in the assignment, as he had by virtue of the assignment in the last-mentioned land, money, or securities; and

(b) if the assignment so provides, or if it takes effect by operation of the law of bankruptcy, and after notice thereof to the trustees of the settlement, no investment or application of capital money for the time being affected by the assignment shall be made without the consent of the assignee, except an investment in securities authorised by statute for the investment of trust money; and

(c) notice of the intended transaction, shall, unless the assignment otherwise provides, be given to the assignee, but a

purchaser shall not be concerned to see or inquire whether such notice has been given.

(5) Where such an assignment for value was made before the commencement of this Act, then on the exercise by the tenant for life after such commencement of any of the powers conferred by this Act—

(a) a purchaser shall not be concerned to see or inquire whether the consent of the assignee has been obtained; and

(b) the provisions of paragraph (a) of the last subsection shall apply for the benefit of the assignee.

(6) A trustee or personal representative who is an assignee for value shall have power to consent to the exercise by the tenant for life of his powers under this Act, or to any such investment or application of capital money as aforesaid, and to bind by such consent all persons interested in the trust estate, or the estate of the testator or intestate.

(7) If by the original assignment, or by any subsequent disposition, the estate or interest assigned or created by the original assignment, or any part thereof, or any derivative interest is settled on persons in succession, whether subject to any prior charge or not, and there is no trustee or personal representative in whom the entirety of the estate or interest so settled is vested, then the person for the time being entitled in possession under the limitations of that settlement, whether as trustee or beneficiary, or who would, if of full age, be so entitled, and notwithstanding any charge or incumbrance subsisting or to arise under such settlement, shall have power to consent to the exercise by the tenant for life of his powers under this Act, or to any such investment or application of capital money as aforesaid, and to bind by such consent all persons interested or to become interested under such settlement.

(8) Where an assignee for value, or any person who has power to consent as aforesaid under this section, is an infant, the consent may be given on his behalf by his parents or parent or testamentary or other guardian in the order named.

(9) The court shall have power to authorise any person interested under any assignment to consent to the exercise by the tenant for life of his powers under this Act, or to any such investment or application of capital money as aforesaid, on behalf of himself and all other persons interested, or who may become interested under such assignment.

(10) An assignment by operation of the law of bankruptcy, where the assignment comes into operation after the commencement of this Act, shall be deemed to be an assignment for value for the purposes of this section.

(11) An instrument whereby a tenant for life, in consideration of marriage or as part or by way of any family arrangement, not being a security for payment of money advanced, makes an assignment of or creates a charge upon his estate or interest under the settlement is to be deemed one of the instruments creating the settlement, and not an assignment for value for the purposes of this section:

Provided that this subsection shall not have effect with respect to any disposition made before the eighteenth day of August, eighteen

hundred and ninety, if inconsistent with the nature or terms of the disposition.

(12) This section extends to assignments made or coming into operation before or after the commencement of this Act, and in this section "assignment" includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance, "assignee" has a corresponding meaning, and "assignee for value" includes persons deriving title under the original assignee.

PRECEDENTS.

I.

PRECEDENT I.

GENERAL CONSENT BY MORTGAGEES OF LIFE INTEREST (*a*).

GENERAL CONSENT *by* MORTGAGEES *of* LIFE INTEREST *under a Settlement of Land to Exercise of Statutory Powers by* ESTATE OWNER.

THIS CONSENT, made the —— day of ——, BETWEEN A., of, &c., and B., of, &c. (herein called "the mortgagees," which expression where appropriate includes persons deriving title under them), of the one part, and C., of, &c., of the other part. WHEREAS the late X., who died on the —— day of —— [*before* 1926], by his Will dated the —— day of ——, after appointing D. and E. (herein called "the trustees") executors and trustees thereof, and also trustees for the purposes of the Settled Land Acts, 1882 to 1890, devised all his freehold hereditaments situate at ——, in the County of —— [*or if specifically described give specific description*], to the said C. during his life with remainders over as therein mentioned. AND WHEREAS the said Will was proved on the —— day of —— by the trustees in the —— Registry, and they [by an Assent in writing dated the —— day of —— (*b*)] have assented to the said devise. AND WHEREAS under the several mortgages and charges, the dates whereof are specified in the Schedule hereto [*all before* 1926], the mortgagees are entitled to certain mortgage debts the payment whereof is secured upon the life interest of the said C. AND WHEREAS by a Vesting Deed dated the —— day of —— [*after* 1925], and made between the trustees, of the one part, and the said C., of the other part,

Recital of Will devising land in settlement:

—of probate and assent;

—of incumbrances on life interest;

—of vesting deed.

(*a*) The will is supposed to have come into operation, and the mortgages and charges to have been made, before 1926: see General Remarks, above. This consent is made by deed, but, if preferred, may be under hand only, as in the next Precedent.

(*b*) Although under the former law an assent to a devise of real estate might have been implied, especially where the executors were the same persons as the trustees, it was often written. If made since 1925, it must be in writing: see ASSENTS, General Remarks.

PRECEDENT I.

GENERAL CONSENT BY MORTGAGEES OF LIFE INTEREST.

the trustees declared that the legal estate in fee simple in the hereditaments so devised by the said Will was vested in the said C. upon the trusts and subject to the powers and provisions upon and subject to which under the settlement created by the said Will or otherwise the same ought to be held from time to time (*c*). AND WHEREAS at the request of the said C. the mortgagees have agreed to give such general consent as is hereinafter contained. NOW THIS DEED WITNESSETH, that in Consent. pursuance of the said agreement, and in consideration of the premises, the mortgagees Do hereby consent, notwithstanding the several mortgages and charges mentioned in the Schedule hereto and any other charge which has already been or may hereafter be given by the said C. to the mortgagees in respect of his life interest in the said hereditaments, to the exercise by the said C. of all the statutory powers conferred upon him by the Settled Land Act, 1925, or any amending Act. IN WITNESS, &c.

SCHEDULE—*Mortgages and Charges.*

II.

PRECEDENT II.

SPECIAL CONSENT BY MORTGAGEES TO SALE BY TENANT FOR LIFE.

MEMORANDUM *of* SPECIAL CONSENT *by* MORTGAGEES *of* LIFE INTEREST *to Sale by* ESTATE OWNER *of a Specified Part of* SETTLED LAND.

WE, the undersigned A., of, &c., and B., of, &c., being by virtue of the mortgages and charges mentioned in the First Schedule hereto assignees for value by way of mortgage of the life interest of C., of, &c., who is tenant for life in possession of the X. Estate (which includes the hereditaments hereinafter described) under a Settlement dated, &c. [*before* 1926], and by virtue of a Vesting Deed dated, &c., made in pursuance of the S. L. Act, 1925, is now the estate owner in fee simple of the said X. Estate upon the trusts of the said settlement, Do HEREBY Consent to sale of specified land. CONSENT to the sale by the said C. under the powers conferred by the Settled Land Act, 1925, of the hereditaments described in the Second Schedule hereto, but without prejudice to our

(*c*) See S. L. Act, 1925, Second Schedule, Para. 1, sub-sects. (1) and (2). The will being a settlement subsisting at the commencement of the Act, by that Act became a trust instrument, and the legal estate for life became an equitable interest, but by the vesting deed the tenant for life becomes an estate owner in fee simple. This deed does not, however, prejudice the rights of the mortgagees, and, subject to the exceptions in sect. 104, sub-sect. (3) (a) and (b), their consent is still necessary to the exercise by the estate owner of his statutory powers, although a purchaser of the settled land is not concerned to inquire whether such consent has been obtained : see sect. 104 set out under General Remarks, above.

PRECEDENT II.

SPECIAL CONSENT BY MORTGAGEES TO SALE BY TENANT FOR LIFE.

rights as mortgagees to a charge upon the life interest of the said C. in the money to arise from such sale and the investments representing the same (*d*). As WITNESS, &c.

FIRST SCHEDULE—*Securities affecting life interest.*

SECOND SCHEDULE—*Hereditaments to which consent applies.*

III.

PRECEDENT III.

CONSENT BY HUSBAND AND WIFE TO CHANGE OF INVESTMENT UNDER THEIR MARRIAGE SETTLEMENT.

CONSENT *by* HUSBAND AND WIFE *to Change of* INVESTMENT *under their* MARRIAGE SETTLEMENT (*e*).

WE, the undersigned A. B. and C. B. [*husband and wife*] do hereby consent to and approve of the sale of the £—— stock held by D. and E. upon the trusts of our marriage settlement dated the —— day of ——, and the reinvestment of the net proceeds in £—— stock. Dated the —— day of ——.

[*Signatures.*]

IV.

PRECEDENT IV.

REQUEST BY HUSBAND AND WIFE TO SETTLEMENT TRUSTEES TO PURCHASE A RESIDENCE.

REQUEST *by* HUSBAND AND WIFE *to* TRUSTEES *of* PERSONALTY SETTLEMENT *to* PURCHASE *a* RESIDENCE (*f*).

TO D. and E., the trustees of our marriage settlement dated the —— day of ——.

WE, the undersigned A. B. and C. B. [*husband and wife*] hereby request you in exercise of the power contained in our marriage settlement to purchase at a price not exceeding the sum of £—— the freehold house and hereditaments known as ——, and for that purpose to raise out of the trust fund such sum as may be sufficient, and to procure the conveyance to yourselves of such hereditaments in accordance with the provisions of the settlement. Dated the —— day of ——.

[*Signatures.*]

(*d*) This Form is intended to be under hand only.

(*e*) As to consents on change of investment, see General Remarks, above.

(*f*) It might be sufficient in this case if, without any previous request, the husband and wife testified their consent by concurring in the conveyance; but where the purchase is to be made "at the request" of the husband and wife, the trustees should strictly follow the terms of the settlement.

CONTRACTS AND CONDITIONS OF SALE.

General Remarks.

Statute of Frauds.

The provisions in sect. 4 of the Statute of Frauds, 1677, requiring some written document for the creation of an enforceable contract relating to land, are now repealed, but are replaced by sect. 40 of the L. P. Act, 1925, which is as follows :—

L. P. Act, 1925, s. 40.

> **40.**—(1) No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised.
>
> (2) This section applies to contracts whether made before or after the commencement of this Act and does not affect the law relating to part performance, or sales by the court.

The new section being substantially the same, the numerous decisions on the repealed part of the statute will still apply. In the case of mutual mistake, the Court has jurisdiction, notwithstanding the statute, to rectify a contract involving a parol variation : see *Craddock Bros.* v. *Hunt*, [1923] 2 Ch. 136; approved by H. L. in *United States* v. *Motor Trucks*, [1924] A. C. 196. For the purposes of these Remarks, however, it is assumed that an enforceable contract in writing has been made in compliance with the above section.

Conditions implied or forbidden by law.

As a written contract may range from a mere offer and acceptance of a specific property at a specific price (generally called an "open" contract) to a formal contract containing general and special conditions, it will be necessary to consider what stipulations are now by law implied, subject to express provision in the contract to the contrary, and what are prohibited.

Agreement to buy land "subject to formal contract."

Where an offer is accepted "subject to a formal contract," there is no binding contract until a formal contract has been executed : see *Rossdale* v. *Denny*, [1921] 1 Ch. 57; *Coope* v. *Ridout*, [1921] 1 Ch. 291; *Thompson* v. *Rex*, [1921] 2 I. R. 438; *Chillingworth* v. *Esche*, [1924] 1 Ch. 97; *Lockett* v. *Norman-Wright*, [1925] Ch. 56. As to excluding the Statutory Form of Conditions of Sale, 1925, see below, p. 99.

Implied stipulations.

As to stipulations implied in contracts, the L. P. Act, 1925, sect. 44, provides as follows :—

L. P. Act, 1925, s. 44.

Thirty years substituted for forty years as root of title.

44.—(1) After the commencement of this Act thirty years shall be substituted for forty years as the period of commencement of title which a purchaser of land may require; nevertheless earlier title than thirty years may be required in cases similar to those in which earlier title than forty years might immediately before the commencement of this Act be required.

Under this sub-section the title to advowsons must still be carried back for 100 years, and the deed creating a term, however ancient, will still be the proper commencement of title thereto (*Frend* v. *Buckley* (1870), L. R. 5 Q. B. 213), though in the latter case the subsequent title need not now be carried back for more than thirty years : see *Williams* v. *Spargo* (1893), W. N. 100 (sale of a term).

Title to reversion to freeholds or leaseholds.

(2) Under a contract to grant or assign a term of years, whether derived or to be derived out of freehold or leasehold land, the intended lessee or assign shall not be entitled to call for the title to the freehold.

(3) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(4) On a contract to grant a lease for a term of years to be derived of out a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

(5) Where by reason of any of the three last preceding subsections, an intending lessee or assign is not entitled to call for the title to the freehold or to a leasehold reversion, as the case may be, he shall not, where the contract is made after the commencement of this Act, be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.

Sub-sect. (2) replaces r. 1 of sect. 2 of the V. & P. Act, 1874, sub-sect. (3) replaces sect. 3, sub-sect. (1), and sub-sect. (4) sect. 13 of the C. Act, 1881. Sub-sect. (5) is new, and does away with the rule as to constructive notice in the case of an open contract laid down in *Patman* v. *Harland* (1881), 17 Ch. D. 353 : compare sect. 44, sub-sect. (8), below.

Title to enfranchised copyholds.

(6) Where land of copyhold or customary tenure has been converted into freehold by enfranchisement, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to make the enfranchisement.

(7) Where the manorial incidents formerly affecting any land have been extinguished, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title of the person entering into any compensation agreement or giving a receipt for the compensation money to enter into such agreement or to give such receipt, and shall not be deemed to be

affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.

Sub-sect. (6) replaces sect. 3, sub-sect. (2) of the C. Act, 1881, but sub-sect. (7) is new, having regard to the provisions for compensation on the compulsory enfranchisement of copyholds effected by the L. P. Acts, 1922 and 1924.

Enfranchisement of copyholds.

All "copyhold land" (L. P. Act, 1922, sect. 189) on January 1, 1926, by virtue of the L. P. Act, 1922, was enfranchised, and ceased to be of copyhold or customary tenure: L. P. Act, 1922, sect. 128. Such enfranchisement is to be deemed to have been effected immediately before the commencement of the L. P. Act, 1925: see sect. 202 of that Act.

The enfranchised land became converted into freehold (L. P. Act, 1922, Twelfth Schedule), except that copyholds for lives or for years (where no right to perpetual renewal) were converted into leasehold: L. P. Act, 1922, sect. 133.

Subject to incidents until extinguishment.

Copyholds so enfranchised still remain subject to manorial incidents (except liability to forfeiture for alienation without licence) until extinguishment, but are free from customary suits and services and liability to do fealty. The lord's right to escheat goes to the Crown as *bona vacantia*. Customary modes of descent, dower, freebench, curtesy, &c., are abolished. The tenant's commonable rights are preserved. The rights of lord or tenant to mines, &c., are not affected, nor are the rights of the lord to fairs, markets, &c. Ferries are not mentioned, but are perhaps included: see L. P. Act, 1922, sect. 128, and Twelfth Schedule, as amended by L. P. Act, 1924, Second Schedule, sect. 4. Forms of special conditions of sale are set out at p. 119, below, applicable to land enfranchised under the old law or by virtue of the L. P. Act, 1922.

What manorial incidents are saved.

The manorial incidents saved until extinguishment include (a) quit rents and similar payments, (b) fines, &c., (c) forfeitures (except for alienation without licence), and (d) rights to timber: sect. 128. As to fines and heriots, see sect. 130; and as to fees to stewards, see sect. 131.

Causes of forfeiture.

As to any right of forfeiture saved by the Act, the Court may give relief to the tenant: sect. 132. What exactly is a cause of forfeiture (apart from alienation) must be ascertained from the old law of copyholds. Generally speaking, a wrongful act by the tenant to the prejudice of the lord was sufficient to entitle the lord to forfeit the copyhold: see Elton (1894), p. 223. If a copyholder committed waste, this was a forfeiture in itself: see Co. Cop. (1673), sect. 57. So alteration of boundaries might be a cause of forfeiture, or, even if the boundaries became

confused, the tenant might be liable to pay for the expense of their ascertainment, for it is his duty to keep the boundaries (*Leeds* v. *Strafford* (1795), 4 Ves. 180), and this liability might continue after enfranchisement : *Searle* v. *Cook* (1890), 43 Ch. D. 519. Questions of this kind may still give rise to dispute.

Extinguishment of manorial incidents.

Elaborate provisions are made by the L. P. Act, 1922 (as amended by the L. P. Act, 1924), for the extinguishment of all manorial incidents, either by agreement or compulsorily within a specified period : L. P. Act, 1922, sects 138-144, Thirteenth and Fourteenth Schedules, and L. P. Act, 1924, Second Schedule, sects. 1-3. These provisions are not confined to the manorial incidents saved by virtue of enfranchisement by the L. P. Act, 1922, but apply to all manorial incidents of a like nature affecting any other land.

Compensation agreement.

Compensation is payable to the lord, and will probably in most cases be made by agreement. The Statutory Forms of Compensation Agreement and of Receipt endorsed thereon are set out below : see Precedents VII. and VIII.

It should be noted that the lord's right to compensation ceases on the expiration of fifteen years from January 1, 1926 : L. P. Act, 1922, sect. 140.

See further "The Enfranchised Land (Certificate of Endorsement) Regulations, 1925," and "The Manorial Incidents (Extinguishment) Rules, 1925."

Constructive notice as to matters prior to the title.

> (8) A purchaser shall not be deemed to be or ever to have been affected with notice of any matter or thing of which, if he had investigated the title or made enquiries in regard to matters prior to the period of commencement of title fixed by this Act, or by any other statute, or by any rule of law, he might have had notice, unless he actually makes such investigation or enquiries.

Thus sub-section is new (compare sub-sect. (5), above), and does not apparently extend to cases where the purchaser by the contract accepts a root of title which deprives him of the right to call for the full period of title fixed by the Act. The principle, therefore, on which *Re Cox and Neve*, [1891] 2 Ch. 109, and *Re Nisbet and Potts*, [1906] 1 Ch. 386, were decided remains unaffected. These cases related to restrictions on the user of land, and now, by the L. C. Act, 1925, an agreement (not being between lessor and lessee) restrictive of the user of land, entered into after 1925, may be registered as a "land charge" or in the Local Deeds Registry, and if not so registered is void as against a purchaser of the land : see sect. 10, sub-sects. (1) (Class D (ii)) and (6), sect. 13, sub-sect. (2). But as in the case of many titles such a restriction will have been made before 1926, purchasers will still be bound by the restric-

Restrictions on the user of land.

tion, although without actual notice. As to the growth and nature of these restrictions, see Jolly on Restrictive Covenants affecting Land (1909) and Behan on the Use of Land as affected by Covenants, &c. (1924). The L. P. Act, 1925, sect. 84, contains some new and important provisions for discharging or modifying such restrictions.

Contract for lease not part of leasehold title.

(9) Where a lease whether made before or after the commencement of this Act, is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

This sub-section replaces sect. 4 of the C. Act, 1882, the object of which was to prevent a purchaser of leasehold land from calling for the contract preliminary to a lease made under a power of leasing. See also the S. L. Act, 1925, sect. 90, sub-sect. (4) (amending sect. 31, sub-sect. (4) of the S. L. Act, 1882), to the effect that a preliminary contract for a lease does not form part of the title or evidence of the title to the lease.

Section how far applicable.

(10) This section, save where otherwise expressly provided, applies to contracts for sale whether made before or after the commencement of this Act, and applies to contracts for exchange in like manner as to contracts for sale, save that it applies only to contracts for exchange made after such commencement.

(11) This section applies only if and so far as a contrary intention is not expressed in the contract.

It will be observed that the stipulations implied by sect. 44 may be expressly excluded by the contract.

Other implied stipulations.

The following further stipulations are implied (subject to express provision in the contract to the contrary) by sect. 45 of the L. P. Act, 1925, which is as follows :—

L. P. Act, 1925, s. 45.

45.—(1) A purchaser of any property shall not—

As to prior title.

(a) require the production, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated, for the commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; or

(b) require any information, or make any requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title, is recited, agreed to be produced, or noticed;

and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will, or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so

recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise:

Provided that this subsection shall not deprive a purchaser of the right to require the production, or an abstract or copy of—

(i) any power of attorney under which any abstracted document is executed; or

(ii) any document creating or disposing of an interest, power or obligation which is not shown to have ceased or expired, and subject to which any part of the property is disposed of by an abstracted document; or

(iii) any document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document.

The first part of this sub-section replaces sect. 3, sub-sect. (3) of the C. Act, 1881, but the proviso is new: see ABSTRACTS, General Remarks.

In a private contract, or in conditions of sale by auction, it is usual and advisable to stipulate as to the commencement of title, even though earlier than the limit prescribed by law, and the nature of the document should be stated: see *Re Marsh and Granville* (1883), 24 Ch. D. 11, where the deed was a voluntary one.

Plan on prior deed.

Where a plan on a deed prior to the root of title is referred to in an abstracted deed, and is essential to the identification of the property sold, it is a question whether the purchaser cannot require to see the plan (see Wms. V. & P. (1922), 106, note (*b*)), but the wording of this sub-section seems strictly to preclude such a requisition.

Validity of lease:

(2) Where land sold is held by lease (other than an under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

—of sub-lease and head lease.

(3) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

These sub-sections replace sub-sects. (4) and (5) of sect. 3 of the C. Act, 1881, and do not apply to a building lease for a long term at a peppercorn rent for the first three years, so as to make the production of a receipt for the peppercorn sufficient evidence of the payment of the rent and performance of the covenants : *Re Moody and Yates* (1885), 30 Ch. D. 344. And, of course, a receipt by the original lessor or ground landlord for the ground rent is not such a receipt as is referred to in the fifth sub-section : *Re Higgins and Percival* (1888), W. N. 172; 57 L. J. Ch. 807. Neither of these sub-sections makes the receipt conclusive evidence, or has any application where it appears that the covenants have not been performed : *Re Highett and Bird*, [1903] 1 Ch. 287; *Re Allen and Driscoll*, [1904] 2 Ch. 226; *Re Taunton, &c., Society and Roberts*, [1912] 2 Ch. 381; and see *Lockharts* v. *Rosen*, [1922] 1 Ch. 433.

Expenses borne by purchaser.

(4) On a sale of any property, the following expenses shall be borne by the purchaser where he requires them to be incurred for the purpose of verifying the abstract or any other purpose, that is to say—

(a) the expenses of the production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the possession of the vendor or his mortgagee or trustee, and the expenses of all journeys incidental to such production or inspection; and

(b) the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the possession of the vendor or his mortgagee or trustee, and all attested, stamped, office, or other copies or abstracts of, or extracts from, any Acts of Parliament or other documents aforesaid, not in the possession of the vendor or his mortgagee or trustee;

and where the vendor or his mortgagee or trustee retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

This sub-section replaces sect. 3, sub-sect. (6) of the C. Act, 1881, the words " in the possession of the vendor or his mortgagee or trustee " being substituted for " in the vendor's possession," following the principle of the decisions in *Re Willett and Argenti* (1889), W. N. 66; 60 L. T. 735; *Re Ebsworth and Tidy* (1889), 42 Ch. D. 23; *Re Stuart and Olivant*, [1896] 2 Ch. 328.

The purchaser need not, however, bear the expense of abstracting a deed not in the vendor's possession, of which the purchaser requires an abstract, if such deed forms part of the title which the vendor is bound to deduce, and the purchaser can compel its production (*Re Johnson and Tustin* (1885), 30

Ch. D. 42), or of abstracting in chief documents forming part of the title, although fully recited in a subsequent instrument (*Re Stamford and Knight*, [1900] 1 Ch. 287), or of procuring a document forming part of the title, such as a certificate required by the lease of a house that it has been completed in accordance with the covenants (*Re Moody and Yates* (1885), 30 Ch. D. 344); but he must bear the expense of evidence of facts : see *Re Conlan and Faulkener*, [1916] 1 I. R. 241 (proof of heirship), and *Re Wright and Thompson*, [1920] 1 Ch. 191 (date of mortgagee entering into possession). On the other hand, the expense of obtaining deeds required by the purchaser to be handed over on completion falls upon the vendor, for the sub-section relates only to expenses of production and inspection : *Re Duthy and Jesson*, [1898] 1 Ch. 419.

Sale in lots.

(5) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

This sub-section, which replaces sub-sect. (7) of sect. 3 of the C. Act, 1881, was commonly inserted in conditions before 1882.

Recitals, &c., when evidence.

(6) Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.

Equitable right to production of documents.

(7) The inability of a vendor to furnish a purchaser with an acknowledgment of his right to production and delivery of copies of documents of title or with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

Expense of acknowledgments for production.

(8) Such acknowledgments of the right of production or covenants for production and such undertakings or covenants for safe custody of documents as the purchaser can and does require shall be furnished or made at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

Documents retained by vendor.

(9) A vendor shall be entitled to retain documents of title where—

(a) he retains any part of the land to which the documents relate; or

(b) the document consists of a trust instrument or other instrument creating a trust which is still subsisting, or an instrument relating to the appointment or discharge of a trustee of a subsisting trust.

These sub-sections replace rr. 2, 3, 4 and 5 of the V. and P. Act, 1874, sect. 2, but para. (b) of sub-sect. (9) is new.

As to the stipulation implied by sub-sect. (6), it was held

in *Bolton* v. *London School Board* (1878), 7 Ch. D. 766, that a forty years' title could not be required where a conveyance twenty years old contained a recital of seisin, but the case has usually been considered of doubtful authority, and has been disapproved by Swinfen Eady, J., in *Re Wallis and Grout*, [1906] 2 Ch. 206. The sub-section is confined to recitals of facts, and does not extend to recitals of instruments. See also *Shrinivasdas Bavri* v. *Meherbai* (1916), 32 T. L. R. 106.

As to what is an equitable right to production (referred to in sub-sect. (7)), see *Re Jenkins and Commercial, &c., Co.* [1917] W. N. 49; as to the expense of furnishing attested copies of deeds retained by the vendor, see sub-sect. (4), above, and Dart. V. & P. (1905), 156; and as to acknowledgments, see ACKNOWLEDGMENTS (Production of Deeds).

Contracts for sale or exchange.

(10) This section applies to contracts for sale made before or after the commencement of this Act, and applies to contracts for exchange in like manner as to contracts for sale, except that it applies only to contracts for exchange made after such commencement:

Provided that this section shall apply subject to any stipulation or contrary intention expressed in the contract.

Protection of purchaser.

(11) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the court.

Insurance against damage to property.

A condition entitling the purchaser to the benefit of any existing insurance against damage to the property sold was often inserted, but now, by the L. P. Act, 1925, sect. 47, it is provided as follows:—

L. P. Act, 1925, s. 47.

47.—(1) Where after the date of any contract for sale or exchange of property, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract, the money shall, on completion of the contract, be held or receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as the same shall be received by the vendor.

(2) This section applies only to contracts made after the commencement of this Act, and has effect subject to—

(a) any stipulation to the contrary contained in the contract,

(b) any requisite consents of the insurers,

(c) the payment by the purchaser of the proportionate part of the premium from the date of the contract.

(3) This section applies to a sale or exchange by an order of the court, as if—

(a) for references to the "vendor" there were substituted references to the "person bound by the order";

(b) for the reference to the completion of the contract there were substituted a reference to the payment of the purchase or equality money (if any) into court;

(c) for the reference to the date of the contract there were substituted a reference to the time when the contract becomes binding.

The purchaser often insures for himself immediately upon the signing of the contract, otherwise a condition was generally advisable, as it had been held that in the absence of such a clause the purchaser would not be entitled to the benefit of the policy (see *Rayner* v. *Preston* (1881), 18 Ch. D. 1; *Castellain* v. *Preston* (1883), 11 Q. B. D. 380; *Phœnix Assurance Co.* v. *Spooner*, [1905] 2 K. B. 753); but he could demand the reinstatement of the property under the Fires Prevention (Metropolis) Act, 1774, sect. 83, which is of general, and not merely local, application: *Sinnott* v. *Bowden*, [1912] 2 Ch. 414; and see *Sun Insurance Office* v. *Galinsky*, [1914] 2 K. B. 545.

Stipulations expressly prohibited.

Certain stipulations affecting the rights of solicitors are now expressly prohibited. Thus it is provided by sect. 48 of the L. P. Act, 1925, as follows:—

L. P. Act, 1925, s. 48.

Restricting purchaser from employing his own solicitor.

48.—(1) Any stipulation made on the sale of any interest in land after the commencement of this Act to the effect that the conveyance to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor appointed by or acting for the vendor, and any stipulation which might restrict a purchaser in the selection of a solicitor to act on his behalf in relation to any interest in land agreed to be purchased, shall be void; and, if a sale is effected by demise or subdemise, then, for the purposes of this subsection, the instrument required for giving effect to the transaction shall be deemed to be a conveyance:

Provided that nothing in this subsection shall affect any right reserved to a vendor to furnish a form of conveyance to a purchaser from which the draft can be prepared, or to charge a reasonable fee therefor, or, where a perpetual rentcharge is to be reserved as the only consideration in money or money's worth, the right of a vendor to stipulate that the draft conveyance is to be prepared by his solicitor at the expense of the purchaser.

(2) Any covenant or stipulation contained in, or entered into with reference to any lease or underlease made before or after the commencement of this Act—

(a) whereby the right of preparing, at the expense of a purchaser, any conveyance of the estate or interest of the lessee or underlessee in the demised premises or in any part thereof, or of otherwise carrying out, at the expense of the purchaser, any dealing with such estate or interest, is expressed to be reserved to or vested in the lessor or underlessor or his solicitor; or

(b) which in any way restricts the right of the purchaser to have such conveyance carried out on his behalf by a solicitor appointed by him;

shall be void:

Provided that, where any covenant or stipulation is rendered void by this subsection, there shall be implied in lieu thereof a covenant or stipulation that the lessee or underlessee shall register with the lessor or his solicitor within six months from the date thereof, or as soon after the expiration of that period as may be practicable, all conveyances and devolutions (including probates or letters of administration) affecting the lease or underlease and pay a fee of one guinea in respect of each registration, and the power of entry (if any) on breach of any covenant contained in the lease or underlease shall apply and extend to the breach of any covenant so to be implied.

(3) Save where a sale is effected by demise or subdemise, this section does not affect the law relating to the preparation of a lease or underlease or the draft thereof.

(4) In this section "lease" and "underlease" include any agreement therefor or other tenancy, and "lessee" and "underlessee" and "lessor" and "underlessor" have corresponding meanings.

Stipulations affecting title how far void.

Following the scheme of the new law, certain stipulations affecting title are, by sects. 42 and 43 of the L. P. Act, 1925, declared to be void or are made nugatory, and the effects of certain contracts are extended.

These sections are as follows :—

L. P. Act, 1925, s. 42.

Concurrence of equitable owners.

42.—(1) A stipulation that a purchaser of a legal estate in land shall accept a title made with the concurrence of any person entitled to an equitable interest shall be void, if a title can be made discharged from the equitable interest without such concurrence—

(a) under a trust for sale; or

(b) under this Act, or the Settled Land Act, 1925, or any other statute.

Costs of getting in legal estate.

(2) A stipulation that a purchaser of a legal estate in land shall pay or contribute towards the costs of or incidental to—

(a) obtaining a vesting order, or the appointment of trustees of a settlement, or the appointment of trustees of a conveyance on trust for sale; or

(b) the preparation stamping or execution of a conveyance on trust for sale, or of a vesting instrument for bringing into force the provisions of the Settled Land Act, 1925;

shall be void.

(3) A stipulation contained in any contract for the sale or exchange of land made after the commencement of this Act, to the effect that an outstanding legal estate is to be traced or got in by or at the expense of a purchaser or that no objection is to be taken on account of an outstanding legal estate, shall be void.

Mortgage terms, equitable and entailed interests.

(4) If the subject-matter of any contract for the sale or exchange of land—

(i) is a mortgage term and the vendor has power to convey the fee simple in the land, or, in the case of a mortgage of a term of years absolute, the leasehold reversion affected by the mortgage, the contract shall be deemed to extend to the fee simple in the land or such leasehold reversion;

(ii) is an equitable interest capable of subsisting as a legal estate,

and the vendor has power to vest such legal estate in himself or in the purchaser or to require the same to be so vested, the contract shall be deemed to extend to such legal estate;

(iii) is an entailed interest in possession and the vendor has power to vest in himself or in the purchaser the fee simple in the land (or, if the entailed interest is an interest in a term of years absolute, such term,) or to require the same to be so vested, the contract shall be deemed to extend to the fee simple in the land or the term of years absolute.

(5) This section does not affect the right of a mortgagee of leasehold land to sell his mortgage term only if he is unable to convey or vest the leasehold reversion expectant thereon.

Undivided shares.

(6) Any contract to convey an undivided share in land made before or after the commencement of this Act, shall be deemed to be sufficiently complied with by the conveyance of a corresponding share in the proceeds of sale of the land in like manner as if the contract had been to convey that corresponding share.

Purchase under compulsory powers.

(7) Where a purchaser has power to acquire land compulsorily, and a contract, whether by virtue of a notice to treat or otherwise, is subsisting under which title can be made without payment of the compensation money into court, title shall be made in that way unless the purchaser, to avoid expense or delay or for any special reason, considers it expedient that the money should be paid into court.

Right of vendor to rescind.

(8) A vendor shall not have any power to rescind a contract by reason only of the enforcement of any right under this section.

(9) This section only applies in favour of a purchaser for money or money's worth.

L. P. Act, 1925, s. 43.

Cancellation of registered land charge.

43.—(1) Where a purchaser of a legal estate is entitled to acquire the same discharged from an equitable interest which is protected by registration as a pending action, annuity, writ, order, deed of arrangement or land charge, and which will not be over-reached by the conveyance to him, he may notwithstanding any stipulation to the contrary, require—

(a) that the registration shall be cancelled; or

(b) that the person entitled to the equitable interest shall concur in the conveyance;

and in either case free of expense to the purchaser.

(2) Where the registration cannot be cancelled or the person entitled to the equitable interest refuses to concur in the conveyance, this section does not affect the right of any person to rescind the contract.

Stipulations not of the essence of the contract.

Conditions in a contract as to date of completion and other matters have been the subject of numerous judicial decisions founded on the equitable jurisdiction of the Courts to say whether or not such conditions are of the essence of the contract, and should or should not be strictly construed according to the literal meaning of the words of such conditions, with the result that there is often uncertainty as to the interpretation of any contract for the sale of land. This uncertainty still remains, for the decision often turns on the view the Court takes of the

fairness or unfairness of the contract (see, *e.g.*, *Stickney* v. *Keeble*, [1915] A. C. 386); and sect. 41 of the L. P. Act, 1925, merely re-enacts in substance sect. 25, sub-sect. (7) of the Judicature Act, 1873, and is as follows :—

41. Stipulations in a contract, as to time or otherwise, which according to rules of equity are not deemed to be or to have become of the essence of the contract, are also construed and have effect at law in accordance with the same rules. L. P. Act, 1925, s. 41.

Stipulations implied in contracts for sale of registered land.

In contracts for the sale of registered land, sect. 110 of the L. R. Act, 1925, contains provisions, as between vendor and purchaser, whereby in some cases notwithstanding, and in others subject to, any stipulations to the contrary, the rights and obligations of each party to the contract are defined. The section is as follows :—

110. On a sale or other disposition of registered land to a purchaser other than a lessee or chargee— L. R. Act, 1925, s. 110.

(1) The vendor shall, notwithstanding any stipulation to the contrary, at his own expense furnish the purchaser with an authority to inspect the register, and, if required, with a copy of the subsisting entries in the register and of any filed plans and copies or abstracts of any documents or any part thereof noted on the register so far as they respectively affect the land to be dealt with (except charges or incumbrances registered or protected on the register which are to be discharged or overridden at or prior to completion) :

Provided that—

(a) unless the purchase money exceeds one thousand pounds the costs of the copies and abstracts of the said entries plans and documents shall, in the absence of any stipulation to the contrary, be borne by the purchaser requiring the same ;

(b) nothing in this section shall give a purchaser a right to a copy or abstract of a settlement filed at the registry :

(2) The vendor shall, subject to any stipulation to the contrary, at his own expense furnish the purchaser with such copies, abstracts and evidence (if any) in respect of any subsisting rights and interests appurtenant to the registered land as to which the register is not conclusive, and of any matters excepted from the effect of registration as the purchaser would have been entitled to if the land had not been registered :

(3) Except as aforesaid, and notwithstanding any stipulation to the contrary, it shall not be necessary for the vendor to furnish the purchaser with any abstract or other written evidence of title, or any copy or abstract of the land certificate, or of any charge certificate :

(4) Where the register refers to a filed abstract or copy of or extract from a deed or other document such abstract or extract shall as between vendor and purchaser be assumed to be correct, and to contain all material portions of the original, and no person dealing with any registered land or charge shall have a right to require production of the original, or be affected in any way by

any provisions of the said document other than those appearing in such abstract, copy or extract, and any person suffering loss by reason of any error or omission in such abstract, copy or extract shall be entitled to be indemnified under this Act:

(5) Where the vendor is not himself registered as proprietor of the land or the charge giving a power of sale over the land, he shall, at the request of the purchaser and at his own expense, and notwithstanding any stipulation to the contrary, either procure the registration of himself as proprietor of the land or of the charge, as the case may be, or procure a disposition from the proprietor to the purchaser:

(6) Unless the certificate is deposited at the registry the vendor shall deliver the land certificate, or the charge certificate, as the case may be, to the purchaser on completion of the purchase, or, if only a part of the land comprised in the certificate is dealt with, or only a derivative estate is created, he shall, at his own expense, produce, or procure the production of, the certificate in accordance with this Act for the completion of the purchaser's registration. Where the certificate has been lost or destroyed, the vendor shall, notwithstanding any stipulation to the contrary, pay the costs of the proceedings required to enable the registrar to proceed without it:

(7) The purchaser shall not, by reason of the registration, be affected with notice of any pending action, writ, order, deed of arrangement or land charge (other than a local land charge) to which this subsection applies, which can be protected under this Act by lodging or registering a creditor's notice, restriction, inhibition, caution or other notice, or be concerned to make any search therefor if and so far as they affect registered land.

This subsection applies only to pending actions, writs, orders, deeds of arrangement and land charges (not including local land charges) required to be registered or re-registered after the commencement of this Act, either under the Land Charges Act, 1925, or any other statute registration whereunder has effect as if made under that Act.

Protection of solicitors adopting Act.

By sect. 66 of the C. Act, 1881, solicitors and trustees were protected if they adopted the provisions of that Act. That section is re-enacted by sect. 182 of the L. P. Act, 1925, which is as follows:—

L. P. Act, 1925, s. 182.

182.—(1) The powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are to be deemed to be included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations, and words, to be given by or to be contained in any such instrument, or to be adopted in connexion with, or applied to, any such contract or transaction, and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connexion with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to

insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his doing so.

(2) But, save as expressly provided by this Act, nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connexion with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations, or words is improper.

(3) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4) Where such persons are acting without a solicitor, they shall also be protected in like manner.

Statutory form of conditions in contracts by correspondence and other contracts for sale of land.

Hitherto it has become the practice, not only in sales of land by auction, but even in some cases in private contracts, to embody in the contract a form of general conditions, which can be adapted or varied by special conditions applicable to the particular circumstances affecting the property to be sold.

By sect. 46 of the L. P. Act, 1925, the Lord Chancellor is empowered to prescribe forms. The section is as follows :—

L. P. Act, 1925, s. 46.

46. The Lord Chancellor may from time to time prescribe and publish forms of contracts and conditions of sale of land, and the forms so prescribed shall, subject to any modification, or any stipulation or intention to the contrary, expressed in the correspondence, apply to contracts by correspondence, and may, but only by express reference thereto, be made to apply to any other cases for which the forms are made available.

A form has already been so prescribed, and will be found set out as Precedent I. The section draws a distinction between contracts by correspondence and other kinds of contracts, but the meaning of " contracts by correspondence " is not defined. In the case of contracts by correspondence, it will be observed that (in addition to other stipulations implied by law) the conditions prescribed are implied unless negatived by modification, stipulation, or *intention* to the contrary. Difficulties of interpretation may arise as to the meaning of " intention," and as to how such intention is to be ascertained.

To prevent misunderstanding it may be safer, in accepting an offer to sell or purchase land, to add to the words " subject to a formal contract " (see p. 85) the words " and, provisionally, so as to exclude the Statutory Form of Conditions of Sale, 1925," or words to that effect, at any rate, until the full effect of the Conditions has been considered and the practice is more settled.

PRECEDENTS.

I.

PRECEDENT. I. — STATUTORY FORM OF CONDITIONS OF SALE.

STATUTORY FORM of CONDITIONS OF SALE, 1925 (*a*).

1. The date for completion shall, unless otherwise agreed, be the 1st day after the expiration of seven weeks from the time when the contract is made, or if that day is a Sunday, Christmas Day, Good Friday or Bank Holiday, the next following working day.

Date fixed for completion.

2. Completion shall take place at the office of the vendor's solicitors, or if the vendor so requires at the office of the solicitors of his mortgagees, if any.

Place for completion.

Possession and apportionment of outgoings.

3.—(1) The purchaser paying his purchase money or, where a deposit is paid, the balance thereof, shall, as from the date fixed for completion (but subject to the execution of any conveyance which ought to be executed by him), be let into possession, or into receipt of rents and profits, and shall, as from that date, pay all outgoings, and up to that date all current rents, and all rates, taxes, and other outgoings shall (if necessary) be apportioned, and the balance shall be paid by or allowed to the purchaser on actual completion, and for this purpose the purchaser shall be liable to pay to the vendor a proportionate part of the current rents accrued in respect of the property up to the date fixed for completion :

Provided that all rates shall be apportioned, so far as practicable, according to the period for which they are intended to provide, and not as running from the dates when the same are made or allowed.

(2) Where as respects any rate the date fixed for completion falls between the expiration of the period for which the last rate was made and the making of a new rate, the new rate shall, for the purposes of this condition, be deemed to have been made at the same rate in the pound as that at which the last rate was made, and shall be calculated from day to day.

Interest on purchase money.

4.—(1) If from any cause whatever (save as hereinafter men-

(*a*) This Precedent is the Form prescribed by the Lord Chancellor under the powers conferred by the L. P. Act, 1925, s. 46 (set out on the preceding page), and is available for any contract for the sale of land made after 1925. The Form is introduced by the following words :—"These conditions will apply to contracts for the sale of land by correspondence, subject to any modification or any stipulation or intention to the contrary expressed in the correspondence. They may also by express reference thereto be made to apply to any contract for the sale of land, and may for this or any other purpose be cited as the Statutory Form of Conditions of Sale, 1925." (Statutory Rules and Orders, 1925, No. 779/L. 14, dated August 7, 1925).

tioned), the completion of the purchase is delayed beyond the date fixed for completion, the purchase money, or where a deposit is paid, the balance thereof, shall bear interest at the rate of £5 per cent. per annum, from the date fixed for the completion to the day of actual payment thereof.

(2) Provided that, if delay in completion arises from any other cause than the purchaser's own act or default the purchaser may—

(a) at his own risk, deposit the purchase money, or where a deposit is paid, the balance thereof, at any bank in England or Wales, in his own name or otherwise, and

(b) give notice in writing forthwith of such deposit to the vendor or his solicitors,

and in that case the vendor shall be bound to accept the interest, if any, allowed thereon, as from the date of such deposit, in lieu of the interest accruing after the date of the deposit, which would otherwise be payable to him under this condition.

(3) No interest shall become payable by the purchaser if delay in completion is attributable to—

(a) a refusal by the vendor to deduce title in accordance with the contract, or to give an authority to inspect the register kept under the Land Registration Act, 1925 (*b*), or to convey; or

(b) any other wilful act or default of the vendor or his Settled Land Act trustees.

(4) The vendor shall, as from the date when interest becomes payable under this condition, have the option (to be exercised by notice in writing) of taking an apportioned part of the rents and profits, less apportioned outgoings, up to the date of actual completion, in lieu of the interest otherwise payable under this condition; and, if the said option is exercised, the same payments, allowances and apportionments shall be made as if the date fixed for completion had been the date of actual completion.

The said option shall not be exercisable in any case in which subclause (2) of this clause applies.

Delivery of abstract.

5.—(1) The vendor shall deliver to the purchaser or his solicitor—

(a) an abstract of the title to the property sold, or

(b) in the case of land registered with an absolute or good leasehold title, the particulars and information which ought to be furnished in lieu of an abstract, with a written authority to inspect the register,

(*b*) See L. R. Act, 1925, s. 110, set out above, at p. 97, and Special Condition I. in Precedent VI. below.

PRECEDENT I.

STATUTORY FORM OF CONDITIONS OF SALE.

and, in either case, within fourteen days from the date when the contract was made.

(2) Where land is registered with a possessory or qualified title, the abstract (if any) shall only relate to estates, rights, and interests, subsisting or capable or taking effect prior to the date of first registration, or excluded from the effect of first registration, and dealings therewith, and subject as aforesaid, the foregoing provisions relating to absolute or good leasehold titles, shall apply.

Requisitions.

6.—(1) The purchaser shall within fourteen days after the actual delivery of the abstract, or of the said particulars and information, whether or not delivered within the time prescribed, send to the solicitors of the vendor a statement in writing of all the objections and requisitions (if any) to or on—

(a) the title or evidence of title,

(b) the abstract or the said particulars and information,

(c) the contract, as respects matters not thereby specifically provided for,

and subject thereto the title shall be deemed accepted.

(2) All objections and requisitions not included in any statement sent within the time aforesaid, and not going to the root of the title, shall be deemed waived.

(3) An abstract or the said particulars and information though in fact imperfect, shall be deemed perfect, except for the purpose of any objections or requisitions, which could not have been taken or made on the information therein contained.

(4) An answer to any objection or requisition shall be replied to, in writing, within seven days after delivery thereof and, if not so replied to, shall be considered saisfactory.

Power to rescind.

7.—(1) If the purchaser shall take or make any objection or requisition, which the vendor is unable to remove or comply with, and the purchaser shall not withdraw such objection or requisition within ten days after being required, in writing, so to do, the vendor may, by notice in writing delivered to the purchaser or his solicitor and notwithstanding any intermediate negotiations, rescind the contract.

(2) This condition does not apply so as to prevent the enforcement by a purchaser, of any right conferred on him, by section forty-two of the Law of Property Act, 1925 (*c*).

(3) If the contract is so rescinded the vendor shall, within one week after default is made in complying with the requirement to withdraw the objection or requisition, repay to the purchaser his deposit money (if any), but without interest, and the purchaser shall return forthwith all abstracts and papers in

(*c*) See this section set out under General Remarks, above.

his possession, belonging to the vendor, and shall not make any claim on the vendor for costs, compensation or otherwise.

PRECEDENT I.

STATUTORY FORM OF CONDITIONS OF SALE.

8.—(1) The conveyance or instrument of transfer to the purchaser, shall be prepared by him and at his own expense, and the draft thereof shall be delivered at the office of the solicitors of the vendor at least ten days before the date fixed for completion, for perusal and approval on behalf of the vendor and other necessary parties (if any).

Preparation of conveyance.

(2) The engrossment of such conveyance or transfer, for execution by the vendor and other necessary parties (if any), shall be left at the said office within four days after the draft has been returned approved on behalf of the vendor and other necessary conveying parties (if any).

(3) Delivery of a draft or of an engrossment shall not prejudice any outstanding requisition.

9.—(1) If the purchaser shall neglect or fail to perform his part of the contract the vendor may give to the purchaser or to his solicitor at least twenty-one days' notice in writing specifying the breach and requiring the purchaser to make good the default before the expiration of the notice.

Power for vendor to resell after notice.

(2) If the purchaser does not comply with the terms of the said notice—

(a) the deposit money, if any, shall, unless the court otherwise directs, be forfeited to the vendor, or, in the case of settled land, to his Settled Land Act trustees;

(b) the vendor may resell the property without previously tendering a conveyance or instrument of transfer to the purchaser;

and the following provisions shall apply.

(3) Any resale may be made, by auction or private contract, at such time, subject to such conditions, and in such manner generally, as the vendor may think proper, and the defaulting purchaser shall have no right to any part of the purchase money thereby arising.

II.

CONTRACT *for the* SALE *of* FREEHOLDS *without special* CONDITIONS (*d*).

PRECEDENT II.

FOR SALE OF FREEHOLDS.

AN AGREEMENT made the —— day of ——, 19—, BETWEEN A., of, &c. (herein called "the vendor"), of the one

Agreement for sale and purchase

(*d*) This Precedent would only be used in the simplest case, and the vendor may prefer to guard himself against possible contingencies by embodying in his contract other general conditions (subject to the purchaser's approval) and any special conditions appropriate to the property sold: see

PRECEDENT II.

FOR SALE OF FREEHOLDS.

part, and B., of, &c. (herein called "the purchaser"), of the other part.

Price and mode of payment.

1. The vendor will sell, and the purchaser will purchase, the fee simple in possession free from incumbrances of ALL THAT [*parcels or by reference to Schedule*] for the sum of £——, whereof £—— shall be paid immediately on the execution of this agreement, and the balance on the —— day of —— next (herein called "the day fixed for completion"), at the office of ——, the solicitor of the vendor, at which time and place the purchase shall be completed.

2. The title shall begin with [a Conveyance on sale dated, &c.]

Requisitions by purchaser.

3. The purchaser shall, within —— days from delivery of the abstract, send to the vendor's solicitor all requisitions on title, and subject thereto the title shall be deemed to be accepted, time being of the essence of this clause.

Vendor to execute a conveyance.

4. Upon payment of the remainder of the said sum of £—— at the office aforesaid, the vendor and all other necessary parties (if any) will execute a proper assurance of the premises to the purchaser, such assurance to be prepared by and at the expense of the purchaser, and to be left by him at the office aforesaid not less than —— days before the day fixed for completion.

Vendor to retain possession till day fixed for completion.

5. Possession will be retained [*or* the rents will be received] by the vendor down to the day fixed for completion, and as from that day all outgoings shall be discharged, and the possession taken [*or* the rents received] by the purchaser, and such outgoings shall, if necessary, be apportioned between the vendor and the purchaser.

Purchaser to pay interest on his purchase-money.

6. If from any cause whatever the purchase shall not be completed on the day fixed for completion, the purchaser shall pay interest at the rate of —— per cent. per annum on the unpaid purchase-money from that day until the completion of the purchase.

Errors not to annul the sale.

Compensation to be settled by arbitration.

7. No error, mis-statement, or omission in the description of the property shall annul the sale; but compensation shall be allowed or given as the case may require, the amount of which in case of dispute shall be settled by arbitration in accordance

---

fuller forms in the following Precedents. It is, however, the intention in this Precedent to insert only such conditions as are obviously fair to both parties.

with the provisions of the Arbitration Act, 1889 (*e*). IN WITNESS, &c. (*f*).

PRECEDENT II.

FOR SALE OF FREEHOLDS.

[SCHEDULE—*Description of property.*]

III.

CONTRACT *for the* SALE *of* FREEHOLDS *and* LEASEHOLDS, *incorporating the Statutory Form or other General* CONDITIONS (*g*).

PRECEDENT III.

FOR SALE OF FREEHOLDS AND LEASEHOLDS.

AN AGREEMENT made the —— day of —— BETWEEN A., of, &c., and B., of, &c. (herein called "the vendors"), of the one part, and C., of, &c. (herein called "the purchaser"), of the other part.

1. The vendors shall sell and the purchaser shall purchase for the sum of £—— FIRST ALL THOSE freehold hereditaments described in Part 1 of the First Schedule hereto for an estate in fee simple in possession; SECONDLY ALL THOSE leasehold hereditaments held under a lease dated, &c., for the term of —— years from the —— day of ——, at the yearly rent of £——, and all the term and interest granted by that lease subject to the lessee's covenants and conditions therein contained, being the hereditaments described in Part 2 of the said First Schedule; AND, as to all the said freehold and leasehold hereditaments, subject to and with the benefit of the leases and sub-leases mentioned in the Second Schedule hereto, but free from incumbrances.

Agreement for sale.

(*e*) This agreement, being intended to be under hand only and to be followed by a conveyance, should (it is thought) bear a 6d. and not an *ad valorem* stamp. See Stamp Act, 1891, sect. 59; and as to that section generally, *West London Syndicate* v. *I. R. Commrs.*, [1898] 2 Q. B. 507; *Farmer & Co.* v. *I. R. Commrs.*, [1898] 2 Q. B. 141; *Danubian Sugar Factories* v. *I. R. Commrs.*, [1901] 1 Q. B. 245; *I. R. Commrs.* v. *Muller, &c., Margarine*, [1901] A. C. 217; *Velasquez* v. *I. R. Commrs.*, [1914] 3 K. B. 458. The section is no longer limited to contracts made in England, Ireland, or Scotland. See Revenue Act, 1909, sect. 7.

(*f*) If it is desired to incorporate the Statutory Form (see preceding Precedent and General Remarks, above) a last clause may be added to this effect: "So far as not inconsistent with the terms of this Agreement, the Statutory Form of Conditions of Sale, 1925, shall apply hereto"; or this clause may be substituted for clauses 3 to 7, which would be omitted. For a form embodying General Conditions, see the next Precedent.

(*g*) This form is an example of a private contract adopting either the Statutory Form (see Precedent I.) or the General Conditions of 1925 issued by the Law Society or other General Conditions of some local Law Society.

PRECEDENT III.

FOR SALE OF FREEHOLDS AND LEASEHOLDS.

2. The property is sold subject to the Conditions herein and to the Statutory Form of Conditions of Sale, 1925 [the —— Conditions of Sale], which latter Conditions (herein called "the —— Conditions") are deemed to be incorporated herewith so far as the same are applicable to a contract by private treaty and are not inconsistent with the Conditions herein, which are as follows :—

Subject to general conditions and to following special conditions.

Payment of purchase money.

(1) The purchaser having paid to the vendors the sum of £—— as a deposit shall pay the residue of the purchase-money to the vendors or as they shall direct on the —— day of —— next (being "the date fixed for completion" within the meaning of the —— Conditions), at the office of —— (being "the office of the vendors' solicitors" within the meaning of the —— Conditions), at which time and place the purchase shall be completed, and if not completed on that date the purchaser shall pay interest on the remainder of the purchase-money at the rate of —— per cent. per annum [instead of —— per cent.] as provided by Condition —— of the —— Conditions.

Commencement of title.

(2) The title shall begin as follows :—

(i) As to the freehold part of the property, with a conveyance on sale dated, &c.

Notice of tenancies.

(ii) As to the leasehold part of the property, with the lease dated, &c., mentioned in Clause 1 hereof.

(3) The purchaser, to whom inspection has been offered before the signing of this Agreement, shall be deemed to have notice of all the contents of the lease of the —— day of ——, and of the leases and sub-leases mentioned in the Second Schedule hereto, whether he has actually inspected them or not. As WITNESS, &c.

FIRST SCHEDULE—PART 1 : *Freeholds;* PART 2 : *Leaseholds.*

SECOND SCHEDULE—*Leases and Sub-leases.*

IV.

PRECEDENT IV.

FOR SALE OF FREEHOLDS OR LEASEHOLDS.

CONTRACT *for the* SALE *of* FREEHOLDS *or* LEASEHOLDS *with General Conditions similar to those used on a Sale by Auction.*

Agreement for sale.

1. AN AGREEMENT, made the —— day of ——, 19—, BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part.

PRECEDENT IV.

FOR SALE OF FREEHOLDS OR LEASEHOLDS.

Parcels.

2. The vendor will sell, and the purchaser will purchase, at the price of £——, the fee simple in possession free from incumbrances of ALL THAT messuage or farm-house and farm called —— Farm, in the parish of ——, in the county of ——, containing —— acres or thereabouts, now in the occupation of ——, the particulars whereof are specified in the Schedule hereto [*if leasehold*, all that messuage No. —— X Street, in the parish of Y., in the county of Z., held by the vendor under a lease dated, &c., for the residue of the term of —— years from the —— day of ——, at the yearly rent of ——, and under and subject to the covenants by the lessee and conditions therein contained [*if registered* being [part of] the land registered in the district of ——, and parish of ——, under the title No. ——].

Fixtures and timber to be taken at a valuation;

3. THE FIXTURES [*if leasehold*, tenant's fixtures] and the timber (*h*) and other trees and underwood down to the value of one shilling per stick on the premises shall be paid for by the purchaser at a valuation which, as well as the decision what are fixtures [*or* tenant's fixtures] shall be made by two valuers, or their umpire, appointed before they enter on their valuation; or if no valuation be made, then the said fixtures and trees and underwood shall be paid for by the purchaser at their fair value, and the amount payable on such valuation shall be payable with and be deemed to form part of the purchase-money.

As to commencement of title.

4. THE TITLE shall begin with the Will dated the —— day of —— of ——, who died on the —— day of ——, and the purchaser shall assume that at his death the said [*testator*] was entitled to the fee simple of the property now sold, [*or, if a conveyance be made, the root of title*, with a conveyance on sale dated the —— day of —— (*i*), *or if the property be leasehold*, with the lease [*or* underlease] under which the same is held, a copy whereof may be seen at the office of the vendor's solicitors] (*k*).

Payment of purchase-money.

5. THE PURCHASER shall pay £——, part of the said purchase-money, into the hands of ——, the vendor's solicitors, as stakeholders for both parties, immediately on the execution of this agreement, and shall pay (*l*) the residue of his purchase-money

(*h*) As to the meaning of "timber," see *Dashwood* v. *Magniac*, [1891] 3 Ch. 306; Dart. V. & P. (1905), 145; Wms. V. & P. (1922), 55; *Re Tower*, [1924] W. N. 331.

(*i*) The nature of the deed with which the title commences should always be mentioned.

(*k*) As to the necessity for giving a reasonable opportunity for inspection of the lease and tenancy agreements (if any), see Dart. V. & P. (1905), p. 103.

(*l*) On sales by private contract where there is no reason to doubt the responsibility of the purchaser, a deposit is sometimes dispensed with. If a deposit is paid to the vendor's solicitor, it should be as stakeholder. See *Ellis* v. *Goulton*, [1893] 1 Q. B. 350. The same case illustrates one of the dangers (often overlooked) of paying to the vendor himself. Sometimes it is provided

PRECEDENT IV.

FOR SALE OF FREEHOLDS OR LEASEHOLDS.

(including value of fixtures, timber and other trees, and underwood) on the —— of —— next (herein called "the date fixed for completion"), at the office of ——, the vendor's solicitors, at which time and place the purchase shall be completed.

[*Continue with General Conditions as in next Precedent, Clauses* 4 *et seq., adding Schedule if required* (*m*)]. IN WITNESS, &c.

V.

PRECEDENT V.

SALE BY AUCTION OF FREEHOLDS.

CONDITIONS *of* SALE *by* AUCTION *of* FREEHOLDS. VARIATIONS *for a Sale in* LOTS.

Reserve and bidding.

1. THE highest bidder [for each lot] shall be the purchaser, subject to a reserve price (*n*) and to the right, which the vendor hereby reserves, to bid by himself or his agent up to such reserve price and also (without declaring the reserve price) to withdraw the property [any lot, or to consolidate, rearrange, and sub-divide any lots or otherwise alter the lotting as may be necessary]. No person shall at any bidding advance less than the sum fixed by the auctioneer and no bidding shall be retracted, but the auctioneer may refuse any bidding. If any dispute shall arise the property [lot] shall at the option of the vendor be put up again at the last undisputed bidding, or the auctioneer may determine the dispute.

Deposit.

2. The [Each] purchaser shall immediately after the sale pay to the auctioneer as agent for the vendor (*o*) a deposit of 10 per cent. of his purchase-money and sign the subjoined agreement. [*Add here, if required, clause as to valuation of fixtures, timber, &c.: see Precedent IV., Clause* 3].

Completion.

3. The [Each] purchaser shall pay the balance of his purchase-money to the vendor or as he shall direct at the office of Messrs. ——, the vendor's solicitors, at —— on the —— day of ——, 19— (herein called "the date fixed for completion"), at which place and time the purchase shall be completed (*p*).

---

that the deposit shall be paid into a bank to the joint account of nominees of the vendor and purchaser, the purchaser being entitled to any interest accruing before completion.

(*m*) These General Conditions will, of course, be carefully scrutinised by the purchaser's solicitor, as some of them may seem to unduly favour the vendor, even though usual on a sale by auction.

(*n*) See Sale of Land by Auction Act, 1867; *Re Longvale, &c. Works*, [1917] 1 I. R. 321; *Re Joseph Clayton*, [1920] 1 Ch. 257.

(*o*) See *Ellis* v. *Goulton*, [1893] 1 Q. B. 350.

(*p*) As to the rights of the purchaser on delay in completion by the vendor, see *Stickney* v. *Keeble*, [1915] A. C. 386; and, in the converse case, see

4. THE RENTS will be received [*or* possession retained] and outgoings (*q*) discharged by the vendor down to the date fixed for completion, and as from that date the outgoings shall be discharged and the rents [*or* possession] shall belong to the purchaser. All rents and outgoings shall, if necessary, be apportioned, but, as to outgoings, subject to Condition 14.

Rents and outgoings.

5. IF FROM any cause completion is delayed (*r*) beyond the date fixed for completion, the purchaser shall pay interest on the unpaid purchase-money at the rate of —— per cent. per annum from that date to the day of actual payment.

Purchaser to pay interest if delay in completion.

6. The [Each] purchaser shall send his objections and requisitions (if any) in respect of the title or otherwise to the office aforesaid, within —— days from the delivery of the abstract, and shall reply to any answer to any objection or requisition within —— days from delivery of such answer; and, subject thereto, shall be deemed to have accepted the title; and the abstract, though imperfect, shall be deemed to be perfect, except as to any further objection or requisition made in respect of any further abstract. Time shall be deemed to be of the essence of this condition.

Purchaser to send objections to title within — days.

7. If the purchaser shall take any objection or make any requisition which the vendor is unable, or on the ground of expense or otherwise is unwilling, to remove or comply with, or if any question shall arise as to the conveyance and the purchaser shall not withdraw such objection or requisition or waive the question within seven days after being required so to do, the vendor may by notice in writing (signed by him or his solicitor) delivered to such purchaser or his solicitor, and notwithstanding any intermediate negotiation or litigation or any adverse judicial decision (*s*), rescind the contract for sale; and the vendor shall within one week after such notice repay to the purchaser whose contract is so rescinded his deposit money without interest, costs, or compensation, which shall be accepted by him in full satisfaction of all claims on any account whatever; and the purchaser whose contract is so rescinded shall return forthwith

Power of vendor to rescind.

Brickles v. *Snell*, [1916] 2 A. C. 599; *Golden Bread Co.* v. *Hemmings*, [1922] 1 Ch. 162.

(*q*) See *Tubbs* v. *Wynne*, [1897] 1 Q. B. 74; *Stock* v. *Meakin*, [1900] 1 Ch. 683; *Re Allen and Driscoll's Contract*, [1904] 2 Ch. 226; *East Ham U. D. C.* v. *Aylett*, [1905] 2 K. B. 22. As to when expenses incurred by a legal authority become a charge, see *Re Farrer and Gilbert*, [1914] 1 Ch. 125. See also Condition 14, below.

(*r*) As to delay caused by litigation of vendor, see *Re Kissock and Taylor*, [1916] 1 I. R. 393.

(*s*) See *Re Arbib and Class*, [1891] 1 Ch. 601; *Re Quigley and M'Clay*, [1918] 1 I. R. 347.

PRECEDENT V.

SALE BY AUCTION OF FREEHOLDS.

all abstracts and papers in his possession belonging to the vendor (*t*).

[*Here follow Special Conditions as to title, &c.: see preceding Precedents and next Precedent*].

Identity.

8. The [Each] Purchaser shall, notwithstanding any discrepancies or variations in names, quantities, measurements, boundaries, abuttals, contour or otherwise, admit the identity of the property purchased with that comprised in the documents abstracted upon the evidence afforded by a comparison of the particulars given [and plan shown] describing such property with such documents, and of a statutory declaration to be made, if required, at the purchaser's expense, that the property has been enjoyed according to the title for twelve years and upwards prior to the sale.

Errors of description not to annul the sale.

9. The property [Each lot] is believed, and shall be taken to be correctly described; and no error, misstatement, or misdescription shall annul the sale, nor shall any compensation be allowed in respect thereof (*u*).

Sale subject to easements (*x*).

10. The property [Each lot] is sold and shall be conveyed subject to all quit, chief, and other rents, rights of way, water, light, drainage, and other easements (if any) affecting the same, and the [each] purchaser will, if so required, covenant to indemnify the vendor in respect thereof.

Costs of conveyance.

11. On payment of the balance of the purchase-money the [each] purchaser shall be entitled to a proper assurance of the property [lot purchased by him] from the vendor and other necessary parties, and such assurance [*and every other instrument, act, or thing which shall be required by the* [*any*] *purchaser for getting in or releasing any outstanding estate, right, title or interest, or for completing or perfecting the vendor's title* (*y*)] shall be prepared by, and at the expense of,

---

(*t*) A vendor cannot exercise his power to rescind capriciously and arbitrarily: *Re Jackson and Haden*, [1906] 1 Ch. 412. Compare *Re Milner and Organ* (1920), 89 L. J. Ch. 315, and *Merrett* v. *Schuster*, [1920] 2 Ch. 240; *Proctor* v. *Pugh*, [1921] 2 Ch. 256.

(*u*) A clause providing for compensation being given will be found in Precedent II. As to a misdescription of existing tenancies, see *Lee* v. *Rayson*, [1917] 1 Ch. 613. As to a misstatement restricting the user of the land, see *Re Courcier and Harrold*, [1923] 1 Ch. 565. A misrepresentation by a vendor as to one lot does not necessarily affect his rights as to another lot merely because both lots have been bought by the same purchaser: *Holliday* v. *Lockwood*, [1917] 2 Ch. 47.

(*x*) As to the difference between a latent and patent defect and an obvious way across land which might either have been (1) a public right of way, (2) a private right of way, or (3) a mere accommodation track used by the owner, see *Yandle* v. *Sutton*, [1922] 2 Ch. 199. In a private contract the purchaser sometimes objects to this Condition.

(*y*) The italicised words in brackets are now void (see L. P. Act, 1925, sect. 42, set out above under General Remarks). It was pointed out in the

the purchaser, and the draft of such assurance shall be left not less than —— days and the engrossment thereof not less than —— days before the date fixed for completion at the office of the vendor's solicitors for perusal and execution respectively by the vendor and other necessary parties [and time shall be of the essence of this condition].

Custody of documents of title.

12. Where documents of title relate to other property as well as to the property sold, and are retained by the vendor or his mortgagee or trustee, the person retaining such documents will (as to such documents as are not of record) give to the purchaser [of the lot purchased by him] the statutory acknowledgment as to production, but (unless given by the vendor) without the undertaking for safe custody [*or if vendor is himself a trustee or mortgagee omit* "unless given by the vendor"], and no other acknowledgment or undertaking or covenant for production shall be required. [Where all lots to which one set of documents relates are sold, the purchaser whose purchase-money is the largest in respect of any one lot or aggregate number of lots, or, in case of equality, the purchaser of the lot first sold, shall be entitled to the custody of such documents, and in respect thereof shall, if so required, give to the purchaser or purchasers of the other lot or lots the statutory acknowledgment and undertaking]. Every acknowledgment and undertaking given under this Condition shall be prepared by and at the expense of the person to whom it is given, but shall be perused on behalf of and executed by the giver at his own expense (*z*).

Tenancy agreements.

13. [The counterparts or copies or abstracts of the leases or written agreements (if any) with the tenants can be inspected at the office of the vendor's solicitors during fourteen days prior to, and will be produced at, the sale (*a*); and the [each] purchaser shall be deemed to have notice of the terms of and shall take subject to all existing tenancies, and the rights of the tenants under the same, whether there is any written agreement or not, and where there is no written agreement the [each] purchaser shall be satisfied with the statement of the vendor as to the terms of the tenancy]. [The lots are sold subject to the apportionment of rents, land tax, and tithe rentcharge

---

preceding edition (1922), p. 59, note (*i*) that these words were generally unfair on the purchaser, and should only be inserted in cases where specially required, and in a private contract might properly be struck out by an intending purchaser: see *Re Willett and Argenti* (1889), W. N. 66; *Re Sander and Walford*, [1900] W. N. 183; 83 L. T. 316.

(*z*) As to cost of acknowledgment, etc., see p. 22.

(*a*) In a private contract, instead of "can be inspected" say "have been produced to the purchaser for his inspection."

PRECEDENT V.

SALE BY AUCTION OF FREEHOLDS.

mentioned in the particulars, and no further or other apportionment shall be required (*b*)].

Requirement of local authority (*c*).

14. If at any time after the sale and before completion any requirement or demand shall be made by any local or public authority in respect of the property [any lot], the purchaser shall on completion repay to the vendor the amount expended by him in complying with such requirement or demand, and in case the same shall not have been fully complied with before the completion of the purchase shall indemnify the vendor in respect thereof, but the vendor, before expending any money in compliance with such requirement or demand, shall inform the purchaser of the receipt thereof and give him the option of complying therewith.

Unstamped documents.

[15. No objection shall be made on the ground of any deed or document executed on or before the sixteenth day of May, 1888, being unstamped or insufficiently stamped [or on account of a memorial of a document not being registered in the Local Deeds Registry, and if the purchaser [of any lot] requires any document to be so registered, it shall be registered at his expense (*d*)]].

Forfeiture of deposit and re-sale on default (*e*).

LASTLY. If the [any] purchaser shall neglect or fail to comply with any of the above Conditions his deposit-money shall be forfeited to the vendor, who may without notice resell the property [lot or lots in respect whereof default occurs] without previously tendering a conveyance to the defaulter, and any resale may be made by auction or private contract, and either as a whole or in lots, and in such manner generally as the vendor may think fit, and any deficiency in price which may happen upon, and all expenses of, such resale (including those of an unsuccessful attempt to resell) shall be borne by the purchaser, and shall be recoverable by the vendor as liquidated damages (*f*).

(*b*) As to right of purchaser to sum paid to vendor for dilapidations by outgoing tenant, see *Re Lyne-Stephens and Scott-Miller*, [1920] 1 Ch. 472.

(*c*) See note to Condition 4.

(*d*) This Condition appears not to be misleading even if the vendor is aware of the unstamped or unregistered document: see *Girling* v. *Girling* (1886), W. N. 18; Dart. V. & P. (1905), p. 186. If the title deeds are clearly in order as regards stamps or registration it would be better not to insert it. It is believed that the Somerset House authorities refuse to stamp a contract after execution if it contains this stipulation as to stamps, so that where this Condition is inserted in a private contract the contract should be stamped before execution.

(*e*) See *Harrison* v. *Holland and Hannen*, [1922] 1 K. B. 211; *Mayson* v. *Clouet*, [1924] A. C. 980. As to form of order, see *Holford* v. *Trim*, [1921] W. N. 243; 65 Sol. J. 768.

(*f*) The following form of memorandum or agreement for the purchaser's signature, or that usually adopted by the auctioneer, should be subjoined. Such memorandum should designate the vendor by name, or sufficient description. See Dart, V. & P., 7th ed., p. 234, and cases there cited; and *Lavery* v.

VI.

SPECIAL CONDITIONS *on Sales by* PRIVATE TREATY *or by* AUCTION.

PRECEDENT VI.

SPECIAL CONDITIONS.

List of Special Conditions.

I. Land registered with absolute or good leasehold title.
II. Land registered with possessory or qualified title.
III. First registration of leaseholds in compulsory district.
IV. Title prior to specified commencement to be given, if required, at purchaser's expense.
V. Receipt for rent evidence of performance of covenants.
VI. Attested copies of documents not in vendor's possession sufficient.
VII. Documents to be evidence.
VIII. As to different titles, tenures, and quantities and boundaries.
IX. Vendor, as fiduciary, to give implied covenant against incumbrances, and no undertaking for safe custody.
X. A like provision as to covenants for title generally and documents.
XI. Vendor selling as tenant for life.

Pursell, 39 Ch. D. 508; *Butcher* v. *Nash* (1889), W. N. 116; *Coombs* v. *Wilkes*, [1891] 3 Ch. 77; *Filby* v. *Hounsell*, [1896] 2 Ch. 737; *Carr* v. *Lynch*, [1900] 1 Ch. 613.

Purchaser's contract.

"I —— acknowledge that I have this day purchased [lot —— of] the property described in the annexed particulars for the sum of £—— under the foregoing conditions of sale, and that I have paid a deposit of £—— on account of the purchase-money, and I undertake to pay the balance of the purchase-money, and to complete my purchase according to the said particulars and conditions [and general remarks and stipulations therein referred to].

Witness my hand this —— day of ——, 19—.

Purchase-money	. .
[including fixtures, &c.]	
Deposit	. .
To be paid ... £	: :

On behalf of A. B., the vendor, I ratify this sale and [as auctioneer] acknowledge the receipt of the said deposit of £——."

PRECEDENT VI.

SPECIAL CONDITIONS.

XII. As to terms of tenancies.
XIII. Payments to outgoing tenants.
XIV. Fire insurance.
XV. Sale of business as a going concern.
XVI. Where copyhold enfranchised under old law.
XVII. Where copyhold enfranchised under new law, and manorial incidents not extinguished.
XVIII. Where manorial incidents extinguished.
XIX. Where compensation already arranged.
XX. Where compensation to be arranged.
XXI. Such title as vendor has.
XXII. Title to be assumed.
XXIII. As to licence to assign lease.
XXIV. As to land tax and tithe rentcharge.
XXV. Indemnity against annuity.
XXVI. Indemnity against unpaid death duties.
XXVII. Rentcharge to be charged exclusively on one lot.
XXVIII. Apportionment of rent on sale of reversion in lots.
XXIX. Apportionment of rent on sale of part of leasehold.
XXX. Leasehold sold in lots to be assigned to one purchaser who shall grant underleases to the others.
XXXI. As to fences and roads.
XXXII. Cost of house to be built, and restriction as to user.
XXXIII. Conveyances to be made subject to stipulations and restrictions.
XXXIV. Conveyance of registered land.
XXXV. Consent of Court to be obtained or contract to be void.
XXXVI. Costs on sale to local authority having compulsory powers (*g*).

Land registered with absolute or good leasehold title.

I. THE VENDOR is registered as proprietor of the property with absolute [good leasehold] title [subject to certain mortgages and charges]. The purchaser shall be entitled to a written authority to inspect the register, and to the particulars and information which ought to be furnished in lieu of an abstract [and an abstract will also be furnished of the said mortgages and charges, commencing with the instruments by which the same respectively were created].

(*g*) This Precedent contains a variety of clauses and conditions intended to be used in connection with the preceding Precedents, to meet the special circumstances of each case. It is sometimes said that sales by auction are never hampered by stringent conditions, but this is probably a mistaken view, and the draftsman ought not to introduce needless stipulations of any description.

PRECEDENT VI.

SPECIAL CONDITIONS.

II. THE VENDOR is registered as proprietor of the property with [possessory or] qualified title, the following estates, rights, and interests being excluded from the effect of such registration [*here state the qualifications*]. The purchaser shall be entitled to a written authority to inspect the register [&c., *as in Form I.*], and an abstract will be furnished of the estates, rights, and interests subsisting or capable of taking effect prior to the date of first registration, and so excluded as aforesaid [*here add any special conditions with reference thereto*].

Land registered with possessory or qualified title.

III. THE VENDOR is not and shall not be required to become registered as proprietor of the land, but the purchaser shall at his own expense procure himself to be registered as such proprietor within *three* calendar months after the completion of the purchase, and the assignment to the purchaser shall (if so required by the vendor) contain a covenant by the purchaser to that effect [and also an appointment of the vendor as the attorney and agent of the purchaser to effect such registration at the purchaser's expense in case the same shall not be effected within the *three* months aforesaid].

First registration of leaseholds in compulsory district (*h*).

IV. THE PRIOR title, whether appearing in any abstracted document or not, shall not be required, investigated or objected to (*i*). NEVERTHELESS if the purchaser shall desire to investigate the prior title, commencing with a conveyance on sale in the year —— [*or as may be*], and of such desire shall give to the vendor or his solicitor notice in writing within *seven* days after the delivery of the abstract of the later title, then the purchaser shall be entitled to have such prior title abstracted and deduced as usual, but at his own expense in all respects [*or* abstracted and verified, and to make objections and requisitions in relation thereto in the usual way, subject to the restrictions and stipulations contained in clause —— hereof, and subject to the obligation of paying the expenses of and incidental to the preparation and verification of the abstract of such prior title, and of removing or attempting to remove objections, and complying or attempting to comply with requisitions in relation thereto, and generally all expenses whatever relating to or connected with the deduction of the prior title].

Title prior to specified commencement to be given if required at purchaser's expense.

V. THE PRODUCTION of a receipt for the last payment of rent accrued previously to the completion of the purchase shall be

Receipt for rent evidence of performance of covenants (*j*).

(*h*) This Condition is applicable to a sale of a leasehold in a compulsory district when the purchaser would not become legal owner until registration. It seems doubtful whether until registration of the purchaser as first proprietor the vendor would not remain liable on the covenants in the lease.

(*i*) See L. P. Act, 1925, sect. 45, set out above under General Remarks.

(*j*) It may be prudent to insert this clause where there have been breaches, and the last portion of it may be useful where the title to the reversion is doubtful. But this Condition does not protect a vendor who conceals the

PRECEDENT VI.

SPECIAL CONDITIONS.

conclusive evidence that the covenants and conditions of the lease [and of every superior lease] have been performed or observed down to such completion, or as regards any which may appear to have been broken that the breach thereof (whether continuing or not) has been waived. No requisition or inquiry shall be made with respect to the title of the person by or on behalf of whom such receipt shall be given, or his right to give or authorise the same.

Attested copies of documents not in vendor's possession sufficient (*k*).

VI. As to any document not in the vendor's possession of which the vendor shall produce an attested copy, the purchaser shall not require the production of the original document or make any objection or requisition on account of the absence or insufficiency of any covenant for production or statutory acknowledgment of the right to production or undertaking for the safe custody thereof.

Documents to be evidence (*l*).

VII. EVERY DOCUMENT dated more than —— years ago shall be conclusive evidence of everything recited, noticed, or implied therein, and also of the contents and due execution of every document recited or noticed therein [which is not in the possession or under the control of the vendor], and that no such recited or noticed document contains anything material to the title beyond what is so recited or noticed, and the purchaser shall not require the production of or make any objection or requisition in relation to any such recited or noticed document.

As to different titles, tenures, and quantities, and boundaries.

VIII. THE VENDOR shall not be required to distinguish what parts of the property are held under different titles or tenures, or to account for any discrepancies in the quantities, and the purchaser shall not make any objection or requisition on the ground of the existence of any such discrepancy or with respect to any encroachment. [*If the land be registered, add where*

---

fact that the landlord has served a notice to repair: *Beyfus* v. *Lodge*, [1925] W. N. 109. Compare this clause with sub-sects. (2) and (3) of sect. 45 of the L. P. Act, 1925, set out above under General Remarks. That the receipt of rent is generally a waiver, see *Rex* v. *Paulson*, [1921] 1 A. C. 271. So, also, if a purchaser takes a conveyance "subject to and with the benefit of" the lease: *Davenport* v. *Smith*, [1921] 2 Ch. 270. That a waiver of a particular breach of a covenant or condition does not operate as a general waiver of such covenant or condition, see L. P. Act, 1925, sect. 148 (replacing L. P. Act, 1860, sect. 6).

(*k*) See L. P. Act, 1925, sect. 45, sub-sect. (7) set out above under General Remarks, which does not meet all the cases provided for in this clause. Moreover, it is not clear under what circumstances an equitable right to production is gained: see *Re Jenkins and Commercial, &c., Co.*, [1917] W. N. 49; 61 Sol. J. 283. As to the legal consequence of a condition requiring the purchaser not to make any objection or requisition in respect of matters of title, see *Re Scott and Alvarez's Contract*, [1895] 2 Ch. 603.

(*l*) This goes much further than the corresponding provision contained in the L. P. Act, 1925, sect. 45, sub-sect. (6) set out above under General Remarks.

proper, "The description of the property in the register shall be conclusive as to the boundaries thereof."]

PRECEDENT VI.

SPECIAL CONDITIONS.

IX. THE VENDOR is a mortgagee [proprietor of a registered charge, *or* a trustee, *or* the personal representative of a deceased person, *or* the committee of a lunatic, *or* the receiver of a defective, *or* the person appointed by the Court to convey], and the vendor shall not be required to enter into any covenant other than the implied statutory covenant against incumbrances [*add where land subject to rentcharge* and for the payment of and indemnity against the rentcharge mentioned in the Particulars] [or to give any undertaking or covenant for the safe custody of documents of title].

Vendor as fiduciary to give implied covenant against incumbrances, and no undertaking for safe custody (*m*).

X. NO PARTY to the conveyance, being a trustee, mortgagee, personal representative, committee of a lunatic, receiver of a defective, or a person appointed by the Court to convey, shall be required to give any covenant other than the statutory covenant against incumbrances [and in conveyances subject to rents, such other statutory covenants as are (*n*)] implied by reason of his being expressed to convey as trustee, mortgagee, personal representative of a deceased person, committee of a lunatic, receiver of a defective, or under an order of the Court, as the case may be, or to give any undertaking or covenant for the safe custody of documents retained by him [and the vendor shall not be required to give any undertaking or covenant for the safe custody of any documents of title retained by any person other than himself, or to give or to procure any statutory or other acknowledgment, undertaking, or covenant with reference to any documents which are neither in his own possession nor in the possession of some other necessary party or parties to such assurance]. No covenant for title shall be required from any person who joins in the conveyance merely to testify his consent to the execution of a trust for sale, whether or not he has any interest in the proceeds of sale.

A like provision as to covenants for title generally, and documents.

XI. THE VENDOR is selling as a person having the powers of a tenant for life under the Settled Land Act, 1925, and shall not be required to enter into any covenant other than the implied statutory covenant against incumbrances [or to give any undertaking or covenant for the safe custody of documents of title]. The trustees for the purposes of the Act, to whom the purchase-

Vendor selling as tenant for life.

(*m*) This Condition will be inserted where the whole property is being sold by the vendor as fiduciary, whereas in the next Condition it is assumed that only part of the property is so sold, or that the property is sold in lots and that all the lots are not being so sold.

(*n*) See L. P. Act, 1925, sect. 77, set out under CONVEYANCES, General Remarks.

PRECEDENT VI.

SPECIAL CONDITIONS.

money shall be paid, shall join in the conveyance only to acknowledge the receipt thereof.

As to terms of tenancies (*o*).

XII. COPIES OF the leases and written agreements with tenants may be seen at the office of the vendor's solicitors during office hours at any time before the sale, and will be produced at the sale, and the purchaser shall be deemed to have full notice of the contents thereof.

Payments to outgoing tenants.

XIII. THE PURCHASER [of lot ——] shall make to the outgoing tenant (which expression, so far as appropriate, includes the vendor as to any land which is in hand) all such payments and allowances for compensation or otherwise as he may be entitled to under the terms of his tenancy or by statute or the custom of the country.

Fire insurance (*p*).

XIV. [THE PURCHASER shall be entitled to the benefit of the subsisting insurance upon the property against loss or damage by fire subject to the consent of the office and to his paying the proportionate part of the premium from the date of the contract for the unexpired period of the insurance.] The vendor shall not be bound (unless so bound to a third party) to keep up or renew any policy of insurance against loss or damage to the property by fire or to notify to the purchaser when any premium falls due, but shall consent to the purchaser's name being endorsed on the policy or entered in the books of the insurer as being interested in the policy. If the contract is rescinded, the vendor may require such endorsement or entry to be cancelled.

Sale of business as a going concern.

XV. THE POSSESSION and profits of the said business (which is sold as a going concern) will be retained, and the wages and other outgoings connected therewith will be discharged by the vendor down to the date fixed for completion, and on, or if the purchase shall not then be completed, as from that date, the possession and profits shall be taken, and the wages and outgoings discharged by the purchaser, and such profits, wages, and outgoings, shall, if necessary, be apportioned. If from any cause the purchase shall not be completed on that date, the business shall be carried on by the vendor at the expense and risk and for the benefit of the purchaser, who shall pay interest on the unpaid purchase-money at the rate of —— per cent. per annum from that date until completion (*q*). Every difference

(*o*) Compare this form with Condition 13 in Precedent V.

(*p*) It had been held that in the absence of express agreement the purchaser would not be entitled to the benefit of the policy: see General Remarks, at p. 94. Now, by the L. P. Act, 1925, sect. 47 (set out above, at p. 93), the law is altered in accordance with the first part of this Condition, but the second part may still be inserted.

(*q*) As to this clause, see *Golden Bread Co.* v. *Hemmings*, [1922] 1 Ch. 162.

arising under, out of, or in consequence of this clause shall be referred to two arbitrators, one to be appointed by each party pursuant to the provisions in that behalf of the Arbitration Act, 1889, or any statutory modification thereof for the time being subsisting.

Where copyhold enfranchised under old law.

XVI. LOT —— was formerly copyhold of the Manor of ——, but was enfranchised by an enfranchisement award [a deed of enfranchisement] dated, &c., and the title shall begin (a) as to the copyhold with a surrender and admittance dated, &c., and (b) as to the freehold with the said enfranchisement award [deed of enfranchisement] (*r*).

Where copyhold enfranchised under new law, and manorial incidents not extinguished.

XVII. LOT —— was formerly copyhold of the Manor of ——, but, by virtue of the L. P. Act, 1922, is now enfranchised. This lot is sold and will be conveyed subject to all subsisting manorial incidents. [The conveyance shall, within six months from execution, be produced by the purchaser to the vendor for his inspection with the steward's certificate duly indorsed thereon (*s*).]

Where manorial incidents extinguished.

XVIII. LOT —— was formerly copyhold of the Manor of ——, but, by virtue of the L. P. Act, 1922, is now enfranchised. Compensation for all manorial incidents has been paid by the vendor, and the receipt for such compensation shall be conclusive evidence that all such incidents are extinguished (*t*).

Where compensation already arranged.

XIX. LOT —— was formerly copyhold of the Manor of ——, but, by virtue of the L. P. Act, 1922, is now enfranchised. By a compensation agreement dated, &c., the compensation consists of [*state nature of compensation*]. This lot is sold subject to the yearly rentcharge of £—— [*or as the case may be*] (*u*).

Where compensation to be arranged.

XX. LOT —— was formerly copyhold of the Manor of ——, but, by virtue of the L. P. Act, 1922, is now enfranchised, and is still subject to certain manorial incidents, but the vendor will, at the request and cost of the purchaser, use his best endeavours to arrange for compensation prior to completion, but not so as to delay completion. If so arranged this lot will be conveyed free from all manorial incidents, but otherwise subject to such incidents as are still subsisting. [In the latter case the con-

---

(*r*) If there were any reservations, or the enfranchisement was subject to a rentcharge, add: "This Lot is sold and will be conveyed subject to the rights reserved on the enfranchisement [*or* subject to the yearly rentcharge of £——.]" It is usual and proper to mention in the Particulars as well as in the Conditions any such reservations, and especially any enfranchisement rentcharge.

(*s*) See L. P. Act, 1922, sect. 129. As otherwise the conveyance will be void so far as regards the grant or conveyance of the legal estate, it is thought that this is a proper Condition.

(*t*) See L. P. Act, 1922, sect. 138.

(*u*) For Statutory Form of Compensation Agreement see Precedent VII.

PRECEDENT VI.

SPECIAL CONDITIONS.

veyance shall, within six months from execution, be produced by the purchaser to the vendor for his inspection with the steward's certificate duly indorsed thereon (*v*).]

Such title as vendor has (*x*).

XXI. THE PURCHASER of lot —— shall take it with the title under which it is now held by the vendor. [An abstract of this title may be seen at the office of —— [*vendor's solicitor*] during office hours at any time before the sale, and will be produced at the sale.]

Title to be assumed.

XXII. THE PURCHASER of lot —— shall assume that the vendor is seised in fee simple in possession of the property comprised therein, and shall not investigate or make any objection or requisition in respect of the title thereto.

As to licence to assign lease (*y*).

XXIII. THE LEASE [of lot ——] contains a restriction on assignment without the licence of the reversioner. The vendor will endeavour at his own expense to obtain, and the purchaser will perform, any reasonable condition required by the reversioner before granting such licence, but if the vendor shall be unable to obtain the same within one month from the date of the contract, either the vendor or the purchaser, upon giving to the other one week's notice in writing, may rescind the contract. In the event of such rescission the vendor shall forthwith repay to the purchaser his deposit money without interest, costs, or compensation, and in full satisfaction of all claims, and the purchaser shall forthwith return all abstracts and papers in his possession belonging to the vendor.

As to land tax and tithe rentcharge.

XXIV. NO APPORTIONMENT of the land tax [*or* tithe rentcharge, *or* terminable annuity payable on redemption of tithe rentcharge] shall be required by the purchaser [who shall accept the apportionment mentioned in the particulars]. No evidence shall be required of the freedom of the property [lot ——] from land tax and tithe rentcharge beyond a statutory declaration by the vendor, to be furnished, if required, at the purchaser's expense, that none has been paid for twelve years prior to the date of the contract (*z*).

Indemnity against annuity.

XXV. THE PROPERTY is subject to an annuity of £—— payable to the wife of the vendor during her present marriage

(*v*) See note (*s*) to Condition XVII. above.

(*x*) A condition that the vendor's title is to be accepted does not bind the purchaser if he is not cognisant of the state of the title: *Re Haedicke and Lipski's Contract*, [1901] 2 Ch. 666.

(*y*) As to a vendor's duty with reference to such licence, see *Day* v. *Singleton*, [1899] 2 Ch. 320; and as to the position where the licence is refused, *Re Marshall and Salt's Contract*, [1900] 2 Ch. 202.

(*z*) Land tax and tithe are not incumbrances, and need not be referred to in Contracts and Conditions of Sale; but where the property is sold free of them, the expense and trouble involved in procuring strict evidence of freedom may be avoided by this condition. As to redemption of tithe rentcharge, see Tithe Act, 1918, and Tithe Annuities Apportionment Act, 1921.

and widowhood. The purchaser shall not require a release of such annuity, but shall be satisfied with a covenant of indemnity by the vendor against the same and an investment by the vendor in the name of the Public Trustee of a sum of £—— Two and a-half per cent. Consolidated Stock upon trust for securing the payment of such annuity, and subject thereto for the vendor, such trusts to be declared by a deed prepared by and at the expense of the vendor and approved of by the purchaser.

Indemnity against unpaid death duties.

XXVI. THE DUTIES payable on the death of ——, the late owner of the property, have not yet been entirely discharged. The purchaser shall accept a covenant by the vendor to indemnify him and the property against the same and shall not make any objection or requisition with respect thereto.

Rentcharge to be charged exclusively on one lot.

XXVII. A PERPETUAL RENTCHARGE [chief rent] of £—— per annum payable out of the whole property offered for sale shall henceforth be charged exclusively on the part comprised in lot —— and in addition to the remedies conferred by law on the owners of the remainder of the property (*a*) the purchaser of that lot (or the vendor in case the lot be not sold) shall in a usual and proper manner indemnify the remainder of the property and the owners thereof against the payment of the rentcharge, and all expenses incidental thereto, the form of indemnity in case of dispute to be settled by the vendor's counsel at the joint and equal expense of the vendor and purchaser.

Apportionment of rent on sale of reversion in lots.

XXVIII. AS THE PROPERTY comprised in lots —— and —— is let on lease at an entire rent of £—— per annum, the said rent shall be apportioned among those lots in the proportions mentioned in the particulars, and the concurrence of the tenant shall not be required to the apportionment (*b*).

Apportionment of rent on sale of part of leasehold (*c*).

XXIX. AS THE PROPERTY offered for sale is held under the same lease with other property not included in this sale, there shall be payable by the purchaser the yearly sum of £—— mentioned in the particulars as an apportioned part of the rent reserved by the lease, and the assignment to the purchaser shall contain usual and proper provisions to that effect and consequential indemnities, the form of which in case of dispute shall

---

(*a*) See L. P. Act, 1925, sect. 190, sub-sects. (1), (2) and (5) to (8).

(*b*) See L. P. Act, 1925, sect. 140, which replaces sect. 12 of the C. Act, 1881; but sub-sect. (2), which is new, enables the lessee, within one month from receiving a notice to quit part of the land, to determine the lease as to the rest of the land.

(*c*) As to the effect of such equitable apportionment and the remedies conferred by law for non-payment of the apportioned rent or breach of the apportioned covenants or conditions, see L. P. Act, 1925, sect. 190, sub-sects. (3) to (8).

PRECEDENT VI.

SPECIAL CONDITIONS.

be settled by the vendor's counsel, but no legal apportionment of the rent shall be required.

Leaseholds sold in lots to be assigned to one purchaser who shall grant underleases to the others (*d*).

XXX. As LOTS —— [the property offered for sale] are [is] held under one lease at an entire rent of £—— per annum, such rents shall be apportioned among those lots [the several lots] in the proportions mentioned in the particulars, and the assurances of such lots shall be effected in the following manner (that is to say): The purchaser of the largest lot in value [lot ——] shall take an assignment of the existing lease, and shall grant to the respective purchasers of the other lots underleases for the whole term, wanting *three* days, of the lots purchased by them respectively at the said apportioned rents, every such underlease to contain all proper covenants and conditions by the under-lessee for securing the payment of the rent apportioned to and the performance of the covenants of the original lease in respect of the lot purchased by such under-lessee, and comprised in the underlease, [and a proviso for re-entry by the person by whom such underlease shall be granted on non-payment of rent or breach of covenant by the under-lessee] and also usual covenants by the person by whom the underlease shall be granted for quiet enjoyment by the under-lessee, [and for payment of the rent reserved by the original lease, and performance of the covenants of that lease in respect of the remainder of the premises therein comprised]. Every such underlease shall also contain a statutory acknowledgment and undertaking for production and safe custody of the original lease and assignments and other documents of title relating to such lot and retained by the under-lessor, but not any covenant for title by the vendor or other covenant express or implied by him. The purchaser of the largest lot in value [lot ——] shall deliver to the vendor a duplicate of the assignment to be pre-

(*d*) See CONVEYANCES, Precedent XXXII. It is thought that this (which has been the usual) is now the most convenient mode of dealing with a leasehold sold in lots. But it may sometimes be desirable to throw the whole rent upon one lot, and to provide that the purchaser of that lot shall take an assignment of the whole property, and grant underleases to the other purchasers at nominal rents. The Condition might easily be modified to suit the arrangement by which the underleases are granted by the vendor, but that involves the introduction into each underlease of covenants by the vendor for title and further assurance, unless it is expressly stipulated that he shall not enter into such covenants; and both alternatives are objectionable. It was decided by Kekewich, J., that trustees for sale of leasehold property comprised in one lease cannot dispose of it in lots by granting underleases with nominal reversions at apportioned rents, the objection being that such a transaction is not a sale (*Re Walker and Oakshott*, [1901] 2 Ch. 383); but the decision has been overruled: *Re Judd and Skelcher*, [1906] 1 Ch. 685. Where part of a leasehold is assigned to one for the residue of the term, and other part is demised to another for a derivative term, neither (it seems) has any right to compel from the other contribution towards payment of the rent (*Johnson* v. *Wild* (1890), 44 Ch. D. 146).

pared and executed by and at the expense of the assignee, and every under-lessee shall deliver to the person by whom the underlease shall be granted a counterpart of such underlease, to be prepared and executed by and at the expense of the under-lessee. If any lot [lot ——] shall remain unsold, the vendor shall, for the purposes of this condition, stand in the place of the purchaser of the largest lot in value, [lot ——] and if all the lots shall be sold, and two or more lots shall be found to be equal in value, the assignment of the original lease shall be taken by such one of the purchasers of those lots as the vendor shall direct. The form of the assignment and of every underlease shall be settled, in case of difference, by the vendor's counsel, whose decision shall be final and binding on all parties [*or* " by arbitration under the Arbitration Act, 1889 "].

As to fences and roads.

XXXI. (1) THE PURCHASER of each lot shall, at his own expense, erect sufficient fences along the inside boundaries thereof, which are marked T on the plan; and at all times keep such fences in good repair, and covenant so to do in his conveyance. (2) The purchasers of the lots numbered —— to ——, both inclusive, shall at their own expense jointly make and for ever maintain the occupation road shown upon the plan. Such road shall be of the width shown on the plan, and the owners, tenants, and occupiers or licensees respectively for the time being of all the last-mentioned lots respectively shall have the right to use the same. Every purchaser shall, in the conveyance or conveyances to him, covenant with the vendor to make and maintain the said road accordingly, and in each such conveyance shall be contained a reservation to the vendor, and to all other persons entitled under this condition to the use of such road, of rights of way for all lawful purposes over the said road. As regards lots which shall not be sold, the vendor shall [not] for the purposes of this condition be in the position or subject to the liabilities of a purchaser.

Cost of house to be built, and restriction as to user.

XXXII. IF THE property be sold in lots, no house shall be built on any of the lots 1, 2, 3, and 4, costing in carcase less than £——, and no house shall be built on lots 5, 6, 7, 8, and 9 respectively, costing in carcass less than £——, and no house erected on any of the lots, except lot 1, shall be used for any other purpose than as a private dwelling-house only. Any house erected on lot 1 may be used as a private dwelling-house, or as a club or hotel, but not for any other purpose.

Conveyances to be made with and subject to stipulations and restrictions (*e*).

XXXIII. THE SEVERAL conveyances of the respective lots affected by the foregoing stipulations numbered —— shall be

(*e*) See CONVEYANCES, Precedent XLI., the First Schedule to which may be compared with the stipulations referred to in this Condition.

PRECEDENT VI.

SPECIAL CONDITIONS.

made with the rights and subject to the liabilities created by such stipulations, but the vendors shall not be bound to enter into any covenants in relation to such rights or liabilities, or to enforce the same further or otherwise than by compelling each conveyance to be made with such rights and subject to such liabilities. The respective conveyances shall contain such provisions with respect to those rights and liabilities as the vendor's counsel shall consider necessary or proper for giving full effect to the aforesaid stipulations, and the respective purchasers shall execute the conveyances of the lots purchased by them, but shall not be entitled to see the conveyances to any of the other purchasers, or to make any requisition, objection, or inquiry relative thereto. If any of the lots be not sold at this auction, the vendor shall [not] for the purpose of the foregoing stipulations stand in the place of the purchasers of those lots so as to be bound thereby.

Conveyance of registered land.

XXXIV. THE ASSURANCE [conveyance *or* assignment of every lot affected by any of the foregoing stipulations, numbered ——] shall be in the form which would have been proper [regard being had to those stipulations] if the land had not been registered, and shall be followed by a transfer in the prescribed form, and the expenses of and incidental to the preparation and execution by all parties other than the vendor of such assurance [conveyance *or* assignment] and transfer shall be borne by the purchaser.

Consent of Court to be obtained, or contract to be void (*f*).

XXXV. THE VENDOR shall at his own expense apply for and endeavour to obtain the approval of the Court to the present contract, and in case such approval shall not be obtained before the —— day of ——, the present contract shall be void.

Costs on sale to local authority having compulsory powers (*g*).

XXXVI. THE COUNCIL shall pay all such costs, charges and expenses in relation to the sale and purchase as would, under the Lands Clauses Consolidation Act, 1845, be payable by them if the said lands had been taken by the Council under their compulsory powers.

(*f*) For example, where a person having the powers of a tenant for life is selling the mansion-house and park or heirlooms subject to an order of the Court (see S. L. Act, 1925, sections 65, 67).

(*g*) On a sale by private contract to a railway company or local authority having compulsory powers, see *Re Burdekin*, [1895] 2 Ch. 136. With respect to the purchase of lands by a local authority for the purposes of the P. H. Act, 1875, see sect. 176 of that Act, which incorporates (with some exceptions) the Lands Clauses Acts. Additional powers for acquiring land for certain purposes are now conferred by the P. H. Act, 1925, *e.g.*, see sect. 33 (street improvements), sect. 68 (parking places) and sect. 69 (grounds for cricket, football, and other games).

VII.

PRECEDENT VII.

STATUTORY FORM OF COMPENSATION AGREEMENT.

STATUTORY FORM *of* COMPENSATION AGREEMENT (*h*).

Manor of ——, in the County of ——.

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN A. B., of, &c. (lord of the above-mentioned manor), of the first part, C. D., of, &c. (mortgagee of the said manor), of the second part, E. F., of, &c., and G. H., of, &c. (Settled Land Act trustees of the vesting deed affecting the said manor), of the third part, X. Y., of, &c. (the owner of the land described in the First Schedule hereto, formerly copyhold of the said manor but now enfranchised by virtue of the Law of Property Act, 1922), of the fourth part, and H. J., of, &c., and K. L., of, &c. (Settled Land Act trustees of the vesting deed affecting the said land), of the fifth part.

WITNESSETH AS FOLLOWS :—

1. Pursuant to the Law of Property Act, 1922, it is agreed that the compensation for the extinguishment of the manorial incidents saved by Part V. of that Act affecting the said land [and of the rights of the lord in or to any mines and minerals in or under the said land and the sporting and other rights affecting the same preserved by the Twelfth Schedule to that Act] shall be the sum of —— pounds with interest thereon payable half yearly at the rate of five and a half pounds per cent. per annum from the date hereof until paid [*or* the principal sum of —— pounds to be paid by twenty equal instalments, the first instalment to be paid on the first day of January next with interest at five and a half per cent. per annum on the said principal sum from the date hereof and a further instalment with interest at the like rate on so much of the said principal sum as for the time being remains unpaid to be paid on every subsequent first day of January until the said principal sum shall be fully paid (all interest up to date being paid with the instalments) and so long as any of the said instalments and interest remain payable a terminable and variable rentcharge commencing from the date hereof and accruing from day to day but payable at the same time as the instalments and interest shall

(*h*) This is the Statutory Form No. 1 in Pt. I. of the 13th Schedule to the L. P. Act, 1922, and see sect. 138. In the Statutory Form, after stating the parties, there appears the following note : "In framing compensation agreements only the persons who on the sale of the manorial incidents and of the land affected would have been able to make a title thereto respectively and give a receipt for the purchase money will be made parties." As to extinguishment of manorial incidents, and provisions as to compensation, see General Remarks above, and Special Conditions XVII., &c., in the preceding Precedent and the Manorial Incidents (Extinguishment) Rules, 1925.

PRECEDENT VII.

STATUTORY FORM OF COMPENSATION AGREEMENT.

issue out of the said land [*or* the part of the said land described in the first part of the First Schedule hereto] of an amount equal to the said instalments and interest from time to time payable and so as to secure the same].

2. The said —— (*the person who retains the custody of the documents mentioned in the first part of the Second Schedule which relate to the manor*) hereby acknowledges the right of the said —— to production of the documents mentioned in the first part of the Second Schedule hereto and to delivery of copies thereof [and hereby undertakes for the safe custody thereof].

3. The said —— (*the person who retains the documents mentioned in the second part of the Second Schedule which relate to the land*) hereby acknowledges the right to the said —— to production of the documents mentioned in the second part of the Second Schedule hereto and to delivery of copies thereof [and hereby undertakes for the safe custody thereof].

4. The stewards compensation and all costs and expenses paid or incurred by the lord and recoverable from the tenant in respect of this extinguishment have been included in the compensation money aforesaid.

As WITNESS the hands of the parties hereto the day and year first above written (*i*).

The FIRST SCHEDULE referred to in the above Agreement—

Description of the Land affected by the Manorial Incidents (*j*).

The SECOND SCHEDULE referred to in the above Agreement.

FIRST PART.

Particulars of documents relating to the said manor and retained by the said ——.

SECOND PART.

Particulars of documents relating to the said land and retained by the said ——.

(*i*) The following note is here added in the Statutory Form :—"If the compensation is not paid in one gross sum, then the agreement should be executed in duplicate. If the tenant releases his rights in the minerals and grants any facilities for working the same the release and grant may be inserted in the agreement which should then be executed under seal. Though the mines and minerals included in the copyhold tenement are enfranchised, the rights in relation thereto are not affected unless expressly included as in paragraph 1.

"The undertaking in paragraphs 2 and 3 will be omitted where a mortgagee or trustee retains the documents."

(*j*) The following note is here added in the Statutory Form :—"This description will be taken from the Court Rolls, unless a new description is agreed to. In default of agreement the party requiring a plan or new description must bear any additional costs incident thereto."

VIII.

PRECEDENT VIII.

STATUTORY FORM OF RECEIPT ON COMPENSATION AGREEMENT.

STATUTORY FORM *of* RECEIPT FOR RENTS, *&c., and* GROSS SUM *to be* ENDORSED *on the* COMPENSATION AGREEMENT (*k*).

The Manor of ——, in the County of ——.

1. The within-named lord of the above-mentioned manor hereby acknowledges that all rents, fines, reliefs, heriots and fees payable in respect of the land referred to in the within agreement have been duly discharged.

2. The said lord [*or* the within-named —— and —— (as trustees for the purposes of the Settled Land Acts of the vesting deed affecting the said manor *or other the proper description of the persons who would be entitled to give a receipt for the proceeds of the sale if the manorial incidents were sold*)] hereby acknowledge[s] the receipt of the compensation money by the within-written agreement agreed to be paid and all interest (if any) due thereon.

Dated this —— day of ——, 19— (*l*).

(*k*) This is the Statutory Form No. 2 in Pt. I. of the 13th Schedule to the L. P. Act, 1922; and see sect. 138 and notes to the preceding Precedent.

(*l*) The following note is here added in the Statutory Form :—"Paragraph 2 will only be used when the compensation is paid in a single gross sum. If a rentcharge is created separate receipts must be given as and when each instalment is paid."

CONVEYANCES.

General Remarks.

Alterations in form of conveyances.

In the simplest case of a conveyance of land in fee simple free from incumbrances in consideration of a gross sum, it will be seen from Precedent I. that there are not many alterations in the old form. The most material is the omission of the words "to the use of" from the habendum. These words, now that the Statute of Uses is repealed, are no longer required to pass the legal estate, and now merely signify "upon trust for." Even before the repeal it was unnecessary to declare a "use" in a conveyance for value, as by the consideration a "use" was raised, and the legal estate would have passed without these words, although in practice they were generally inserted: see Elph. Intr. Conv. by Maw (1918), 12, 129. As to the effect of the repeal or previous or future declarations of uses, see L. P. Act, 1925, sect. 1, sub-sects. (9), (10).

Omission of "to the use of."

Use of the word "indenture."

The use of the word "indenture" will in future be generally abandoned. It appears that "*indentura*" did not originally signify a deed between parties, but merely an agreement (generally between creditor and debtor) which, being written in duplicate on one sheet, was so cut that the parts, when put together, could at any time be identified as forming the parts of the original document: see Spelman's Glossary, "Indentura."

Although later it was the practice to engross deeds on one parchment and similarly cut them, the practice has ceased, and the word has become archaic, and now merely signifies a deed between parties as distinguished from a deed poll, and a deed between parties has the effect of an indenture, though not indented or expressed to be an indenture: see L. P. Act, 1925, sect. 56, sub-sect. (2). Moreover, the Legislature now sanctions the disuse of the word by sect. 57 of the L. P. Act, 1925, which is as follows:—

L. P. Act, 1925, s. 57.

> **57.** Any deed, whether or not being an indenture, may be described (at the commencement thereof or otherwise) as a deed simply, or as a conveyance, deed of exchange, vesting deed, trust instrument, settlement, mortgage, charge, transfer of mortgage, appointment, lease or otherwise according to the nature of the transaction intended to be effected.

In the Precedents throughout this work the use of the word "indenture" is avoided, both in the opening words and in the

witnessing part of the deed, and even in recitals of deeds made before 1926.

Deed poll.

There is no reason, however why any alteration should be made in the form of a deed poll, which begins, where there are no recitals, "Know all men by these presents that I," &c., continuing in the first person, or where there are recitals, "To all to whom these presents shall come, A., of, &c., sends greeting," continuing in the third person. If preferred, the phrase "this Deed" may be substituted for "these presents," but in the Precedents in this work, in the case of a deed poll, the old form is retained.

Supplemental instruments.

The provisions in sect. 53 of the C. Act, 1881, as to supplemental deeds are now replaced, with alterations and additions, by sect. 58 of the L. P. Act, 1925, which is as follows :—

L. P. Act, 1925, s. 58.

> **58.** Any instrument (whether executed before or after the commencement of this Act) expressed to be supplemental to a previous instrument, shall, as far as may be, be read and have effect as if the supplemental instrument contained a full recital of the previous instrument, but this section does not operate to give any right to an abstract or production of any such previous instrument, and a purchaser may accept the same evidence that the previous instrument does not affect the title as if it had merely been mentioned in the supplemental instrument.

Reference to directing a deed to be read as an "annex" is omitted (being in practice hardly ever used), and the last part of this section is new, and meets the possible contention that the implication of a full recital of a previous instrument which is not fully recited might operate to fix a purchaser with constructive notice of the facts stated in the previous instrument, and so entitle him to claim production of such instrument : see also "The Use of Supplemental Deeds," discussed in 53 Sol. J. 352.

Construction of "month," "person," &c.

In instruments executed, made, or coming into operation after 1925, unless the context otherwise requires, "month" means "calendar month," "person" includes "corporation," singular includes plural, and masculine includes feminine, and *vice versa* : L. P. Act, 1925, sect. 61. Since 1850 this has been the rule in Acts of Parliament (see Interpretation Act, 1889, sects. 1, 3), but is now extended as above. Hitherto, in legal documents, unless the context or the circumstances indicated a contrary intention, "month" was construed as "lunar month" : see *Phipps & Co.* v. *Rogers*, [1925] 1 K. B. 14.

Conveyance to self alone, &c.

Two or more persons might always have conveyed property to any one or more of them, and after August 12, 1859, a person might convey personal property, including chattels real, to himself jointly with another, and in conveyances after 1881

this rule was extended to freehold land and things in action, and to a conveyance by a husband to his wife and by a wife to her husband alone or jointly with another person. Now also (after 1925) a person may convey land (which includes land of any tenure : see L. P. Act, 1925, sect. 205, sub-sect. (1) (ix)) to, or vest land in, himself : L. P. Act, 1925, sect. 72.

Execution of deed by individual.

Now, in the case of deeds executed by an individual after 1925, sealing alone is not sufficient, but he must either sign or place his mark upon the same : L. P. Act, 1925, sect. 73.

Conditions and covenants when not implied. L. P. Act, 1925, s. 59.

The L. P. Act, 1925, sect. 59 (replacing part of sect. 4 of the R. P. Act, 1845), provides as follows :—

> **59.**—(1) An exchange or other conveyance of land made by deed after the first day of October, eighteen hundred and forty-five, does not imply any condition in law.
>
> (2) The word "give" or "grant" does not, in a deed made after the date last aforesaid, imply any covenant in law, save where otherwise provided by statute.

Covenants implied by certain statutory expressions.

Since 1881, however, by the C. Act, 1881, sect. 7, by the use of certain statutory expressions ("as beneficial owner," &c.), there have been imported into conveyances covenants for title and other covenants which had previously been inserted. These provisions have been replaced by sect. 76 of the L. P. Act, 1925, with variations. This section is as follows :—

L. P. Act, 1925, s. 76.

> **76.**—(1) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is (when the law permits) made as tenants in common, that is to say :
>
> (A) In conveyance for value "As beneficial owner."
>
> (A) In a conveyance for valuable consideration, other than a mortgage, a covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part I. of the Second Schedule to this Act.

The terms of the covenant referred to are as follows :—

2nd Sch., Pt. I. Right to convey

> That, notwithstanding anything by the person who so conveys or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which, it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall

remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one (not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made), through whom the person who so conveys derives title, otherwise than by purchase for value: Quiet enjoyment.

And that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands, other than those subject to which the conveyance is expressly made, as, either before or after the date of the conveyance, have been or shall be made, occasioned, or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value: Free from incumbrances.

And further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required. Further assurance.

In the above covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage. Marriage settlements not included.

(B) In a conveyance of leasehold property for valuable consideration, other than a mortgage, a further covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part II. of the Second Schedule to this Act. (B) Further covenant in conveyances of leaseholds "as beneficial owner."

The terms of the covenant referred to are as follows :—

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is 2nd Sch., Pt. II. Validity of lease.

conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and has in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed have been paid, observed and performed up to the time of conveyance.

Marriage settlements not included.

In the above covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage.

(c) In mortgage or charge "as beneficial owner."

(c) In a conveyance by way of mortgage (including a charge) a covenant by a person who conveys or charges and is expressed to convey or charge as beneficial owner in the terms set out in Part III. of the Second Schedule to this Act.

The terms of the covenant referred to are as follows :—

2nd Sch., Pt. III.

Right to convey.

That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed :

Quiet enjoyment.

And also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person (not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made) :

Free from incumbrances.

And that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims, and demands whatever, other than those subject whereto the conveyance is expressly made :

Further assurance.

And further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof, to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in

which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

The above covenant in the case of a charge shall have effect as if for references to "conveys," "conveyed" and "conveyance" there were substituted respectively references to "charges," "charged" and "charge."

Meaning of "mortgage."

The addition after "mortgage" of the words "including a charge" is new and, perhaps, unnecessary, as "mortgage" is defined to include "any charge or lien on any property for securing money or money's worth" (L. P. Act, 1925, sect. 205, sub-sect. (1) (xvi.).

(D) Further covenant in mortgage or charge of freeholds subject to a rent or of leaseholds "as beneficial owner."

(D) In a conveyance by way of mortgage (including a charge) of freehold property subject to a rent or of leasehold property, a further covenant by a person who conveys or charges and is expressed to convey or charge as beneficial owner in the terms set out in Part IV. of the Second Schedule to this Act.

The terms of the covenant referred to are as follows :—

2nd Sch., Pt. IV. Validity of lease or grant.

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed and is in full force, unforfeited, and unsurrendered and has in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance :

Payment of rent and performance of covenants.

And also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains owing on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them.

The above covenant in the case of a charge shall have effect as if for references to "conveys," "conveyed" and "conveyance" there were substituted respectively references to "charges," "charged" and "charge."

The reference here to the inclusion of freeholds conveyed subject to a "rent" (*e.g.*, a rentcharge or fee farm rent) is new.

As to the covenants referred to under (C) and (D) and set out above, see MORTGAGES, General Remarks.

(E) In settlement "as settlor."

(E) In a conveyance by way of settlement, a covenant by a person who conveys and is expressed to convey as settlor in the terms set out in Part V. of the Second Schedule to this Act;

The terms of the covenant referred to are as follows :—

2nd Sch., Pt. V. Further assurance.

> That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, as by them or any of them shall be reasonably required, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made.

Voluntary settlement.

It will be noted that in (A) and (B) above, a purchase for value does not include a conveyance in consideration of marriage. Nor would it include a voluntary (*e.g.*, post-nuptial) settlement, as not being for valuable consideration, but such a settlement would be included under (E).

(F) In any conveyance "as trustee," &c.

> (F) In any conveyance, a covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic or as receiver of a defective, or under an order of the court, in the terms set out in Part VI. of the Second Schedule to this Act, which covenant shall be deemed to extend to every such person's own acts only, and may be implied in an assent by a personal representative in like manner as in a conveyance by deed.

The terms of the covenant referred to are as follows :—

2nd Sch., Pt. VI. Against incumbrances.

> That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.
>
> *The foregoing covenant may be implied in an assent in like manner as in a conveyance by deed.*

As to the expressions "as committee of a lunatic" or "as receiver of a defective," see Lunacy Act, 1890, sect. 116; Lunacy Act, 1908, sect. 1; Mental Deficiency Act, 1913, sect 64; L. P. Act, 1925, sects. 22, 171, 205, sub-sect. (1) (xiii).

That the covenant against incumbrances "may be implied in an assent," &c., is new. See also reference in italics at the end of the covenant, and A. E. Act, 1925, sect. 36, sub-sect. (3), set out under ASSENTS, General Remarks.

As to the enforcement of this covenant where executors,

having assented to a bequest of leaseholds, purported to convey on sale "as personal representatives, &c.": see *Wise* v. *Whitburn*, [1924] 1 Ch. 460. The assent here was implied, but see now A. E. Act, 1925, sect. 36, sub-sect. (4) (set out under ASSENTS, General Remarks), by which assents to the vesting of a legal estate must be in writing.

In conveyance "by direction of — as beneficial owner."

(2) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, for the purposes of this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

In conveyance by wife and husband each "as beneficial owner."

(3) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, for the purposes of this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

No implied covenant apart from statutory expressions.

(4) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic or as receiver of a defective, or under an order of the court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

Lease not affected.

(5) In this section a conveyance does not include a demise by way of lease at a rent, but does include a charge and "convey" has a corresponding meaning.

Benefit of covenant.

(6) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

Variation of covenant.

(7) A covenant implied as aforesaid may be varied or extended by a deed or an assent, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

(8) This section applies to conveyances made after the thirty-first day of December, eighteen hundred and eighty-one, but only to assents by a personal representative made after the commencement of this Act.

Protection of solicitor as to implied covenants.

A solicitor who obtains for his client the benefit of the implied statutory covenants, will be discharged from the liability which he might otherwise have incurred for not inserting in the deeds similar express covenants (L. P. Act, 1925, sect. 182, set

out under CONTRACTS, General Remarks). But it must be borne in mind that *the appropriate covenants will only be implied where the statutory expressions are used* (see sub-sect. (4)) : and that, if not used, the covenants which ought to have been entered into by the conveying party in a conveyance before 1882, must be inserted.

Cases may still arise where express covenants are advisable, but such cases are now rare.

Leases.

A covenant by the lessor for quiet enjoyment is still required in leases at a rent, which are expressly excluded (see sub-sect. (5)), and as to this covenant see note to Precedent V. under LEASES, p. 265.

Variation of implied covenants

It should also be noticed that the implied covenants may be varied or extended by deed (sub-sect. (7)), and of course other covenants may be inserted in the conveyance in their stead. Express covenants will no doubt operate by way of variation of the implied statutory covenants, but no question as to the effect of express covenants in this respect can arise where the covenantor is not expressed to convey in any of the characters mentioned in sub-sect. (4).

Covenant as to right to convey.

The effect of the covenant as to the right to convey implied by the words " as beneficial owner " in a conveyance on sale was considered in *Eastwood* v. *Ashton*, [1915] A. C. 900, where a strip of land included in the property as described was found after the conveyance to belong to some other person by an adverse title under the Limitation Acts. It was held that the vendor, by not having enforced his rights to the strip within the period limited by law, had " omitted " something within the meaning of sect. 7, sub-sect. (1) (A) of the C. Act, 1881.

Covenant against incumbrances.

The implied covenant against incumbrances extends only to incumbrances on the land, and does not extend to claims against the owner of the land personally as owner (*Egg* v. *Blayney* (1888), 21 Q. B. D. 107; and compare *Stock* v. *Meakin*, [1900] 1 Ch. 683; *Re Farrer and Gilbert*, [1914] 1 Ch. 125. See also *David* v. *Sabin*, [1893] 1 Ch. 523, in which it was held that sub-leases made by a lessee from whom the lessor afterwards took a surrender were incumbrances made by " a person rightfully claiming under the " lessor within this section, and the meaning of the word " omitted " in this section was considered. In *Page* v. *Midland Rail. Co.*, [1894] 1 Ch. 11, it was decided that defects of title appearing on the face of a conveyance or otherwise known to the purchaser are not to be excluded from the operation of the covenants for title, and the decision would seem to be applicable to implied as well as to express covenants (*May* v. *Platt*, [1900] 1 Ch. 616; *Great Western Rail. Co.* v.

Fisher, [1905] 1 Ch. 316). As to the measure of damages for breach of covenants for title, see *Turner* v. *Moon*, [1901] 2 Ch. 825, and *Great Western Rail. Co.* v. *Fisher*, [1905] 1 Ch. 316. Usual implied covenants were, in *Re Ray*, [1896] 1 Ch. 468, authorised by the Court to be entered into by the committee in a conveyance on sale as tenant for life, and now the committee of a lunatic or the receiver of a defective may make all requisite dispositions for conveying or creating a legal estate in the name and on behalf of the lunatic or defective (L. P. Act, 1925, sect. 22, sub-sect. (1)).

Covenants implied in conveyance on behalf of a lunatic.

Further covenants are now also implied in conveyances for value (other than mortgages) made after 1925, where the land conveyed is affected by a rentcharge or is leasehold subject to a rent. Separate provisions are made for cases where part only of such land is conveyed, and where there has or has not been a legal apportionment. The several covenants and provisions are contained in sect. 77 of the L. P. Act, 1925, which by reference incorporates Parts VII. to X. of the Second Schedule to that Act. This section and the Parts of the Schedule referred to are as follows :—

Further covenants implied in certain conveyances.

L. P. Act, 1925, s. 77.

77.—(1) In addition to the covenants implied under the last preceding section, there shall in the several cases in this section mentioned, be deemed to be included and implied, a covenant to the effect in this section stated, by and with such persons as are hereinafter mentioned, that is to say :—

(A) Where whole land affected by rentcharge.

(A) In a conveyance for valuable consideration, other than a mortgage, of the entirety of the land affected by a rentcharge, a covenant by the grantee or joint and several covenants by the grantees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in Part VII. of the Second Schedule to this Act. Where a rentcharge has been apportioned in respect of any land, with the consent of the owner of the rentcharge, the covenants in this paragraph shall be implied in the conveyance of that land in like manner as if the apportioned rentcharge were the rentcharge referred to, and the document creating the rentcharge related solely to that land.

The terms of the covenant referred to are as follows :—

2nd Sch., Pt. VII.

Covenant by grantee to pay rentcharge.

That the grantees or the persons deriving title under them will at all times, from the date of the conveyance or other date therein stated, duly pay the said rentcharge and observe and perform all the covenants, agreements and conditions contained in the deed or other document creating the rentcharge, and thenceforth on the part of the owner of the land to be observed and performed :

— to indemnify conveying party.

And also will at all times, from the date aforesaid, save harmless and keep indemnified the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rentcharge

or any part thereof, or any breach of any of the said covenants, agreements and conditions.

(B) Where part of land affected by rentcharge.

(B) In a conveyance for valuable consideration, other than a mortgage, of part of land affected by a rentcharge, subject to a part of that rentcharge which has been or is by that conveyance apportioned (but in either case without the consent of the owner of the rentcharge) in respect of the land conveyed :—

(i) Covenant by grantee.

(i) A covenant by the grantee of the land or joint and several covenants by the grantees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in paragraph (i) of Part VIII. of the Second Schedule to this Act.

The terms of the covenant referred to are as follows :—

2nd Sch., Pt. VIII., para. (i).

— to pay apportioned rentcharge.

— to indemnify conveying party.

That the grantees, or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, pay the apportioned rent and observe and perform all the covenants (other than the covenant to pay the entire rent) and conditions contained in the deed or other document creating the rentcharge, so far as the same relate to the land conveyed :

And also will at all times, from the date aforesaid, save harmless and keep indemnified the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said apportioned rent, or any breach of any of the said covenants and conditions, so far as the same relate as aforesaid.

(ii) Covenant by person conveying "as beneficial owner."

(ii) A covenant by a person who conveys or is expressed to convey as beneficial owner, or joint and several covenants by the persons who so convey or are expressed to so convey, if at the date of the conveyance any part of the land affected by such rentcharge is retained, with the grantees of the land and with each of them (if more than one) in the terms set out in paragraph (ii) of Part VIII. of the Second Schedule to this Act.

The terms of the covenant referred to are as follows :—

2nd Sch., Pt. VIII., para. (ii).

— to pay balance of rentcharge.

That the conveying parties, or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, pay the balance of the rentcharge (after deducting the apportioned rent aforesaid, and any other rents similarly apportioned in respect of land not retained), and observe and perform all the covenants, other than the covenant to pay the entire rent, and conditions contained in the deed or other document creating the rentcharge, so far as the same relate to the land not included in the conveyance and remaining vested in the covenantors :

— to indemnify grantee.

And also will at all times, from the date aforesaid, save harmless and keep indemnified the grantees and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the aforesaid balance of the rentcharge, or any breach of any of the said covenants and conditions so far as they relate as aforesaid.

It should be noted that this covenant is only implied by a person conveying "as beneficial owner," but by sub-sect. (4) of this section, the covenant may be implied by persons acting in a fiduciary capacity if they expressly refer to the section.

(c) In a conveyance for valuable consideration, other than a mortgage, of the entirety of the land comprised in a lease, for the residue of the term or interest created by the lease, a covenant by the assignee or joint and several covenants by the assignees (if more than one) with the conveying parties and with each of them (if more than one) in the terms set out in Part IX. of the Second Schedule to this Act. Where a rent has been apportioned in respect of any land, with the consent of the lessor, the covenants in this paragraph shall be implied in the conveyance of that land in like manner as if the apportioned rent were the original rent reserved, and the lease related solely to that land. (c) Where whole land is in lease.

The terms of the covenant referred to are as follows :—

That the assignees, or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, duly pay all rent becoming due under the lease creating the term or interest for which the land is conveyed, and observe and perform all the covenants, agreements and conditions therein contained and thenceforth on the part of the lessees to be observed and performed : 2nd Sch., Pt. IX. Covenant by assignee to pay rent;

And also will at all times, from the date aforesaid, save harmless and keep indemnified the conveying parties and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rent or any breach of any of the said covenants, agreements and conditions. — to indemnify conveying party.

(d) In a conveyance for valuable consideration, other than a mortgage, of part of the land comprised in a lease, for the residue of the term or interest created by the lease, subject to a part of the rent which has been or is by the conveyance apportioned (but in either case without the consent of the lessor) in respect of the land conveyed :— (d) Where part of land is in lease.

(i) A covenant by the assignee of the land, or joint and several covenants by the assignees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in paragraph (i) of Part X. of the Second Schedule to this Act. (i) Covenant by assignee.

The terms of the covenant referred to are as follows :—

That the assignees, or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, pay the apportioned rent and observe and perform all the covenants, other than the covenant to pay the entire rent, agreements and conditions contained in the lease creating the term or interest for which the land is conveyed, and thenceforth on the part of the lessees to be observed and performed, so far as the same relate to the land conveyed : 2nd Sch., Pt. X., para. (i). — to pay apportioned rent.

And also will at all times from the date aforesaid save harmless and keep indemnified, the conveying parties and their respective — to indemnify conveying party.

estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said apportioned rent or any breach of any of the said covenants, agreements and conditions so far as the same relate as aforesaid.

(ii) Covenant by person conveying "as beneficial owner."

(ii) A covenant by a person who conveys or is expressed to convey as beneficial owner, or joint and several covenants by the persons who so convey or are expressed to so convey, if at the date of the conveyance any part of the land comprised in the lease is retained, with the assignees of the land and with each of them (if more than one) in the terms set out in paragraph (ii) of Part X. of the Second Schedule to this Act.

2nd Sch., Pt. X., para. (ii).

The terms of the covenant referred to are as follows :—

— to pay balance of rent.

That the conveying parties, or the persons deriving title under them, will at all times, from the date of the conveyance, or other date therein stated, pay the balance of the rent (after deducting the apportioned rent aforesaid and any other rents similarly apportioned in respect of land not retained) and observe and perform all the covenants, other than the covenant to pay the entire rent, agreements and conditions contained in the lease and on the part of the lessees to be observed and performed so far as the same relate to the land demised (other than the land comprised in the conveyance) and remaining vested in the covenantors :

— to indemnify assignee.

And also will at all times, from the date aforesaid, save harmless and keep indemnified, the assignees and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the aforesaid balance of the rent or any breach of any of the said covenants, agreements and conditions so far as they relate as aforesaid.

Compare observations above on (B) (ii) as to conveying "as beneficial owner."

Where part of land made subject to or exonerated from entire rent.

(2) Where in a conveyance for valuable consideration, other than a mortgage, part of land affected by a rentcharge, or part of land comprised in a lease is, without the consent of the owner of the rentcharge or of the lessor, as the case may be, expressed to be conveyed—

(i) subject to or charged with the entire rent—

then paragraph (B) (i) or (D) (i) of the last subsection, as the case may require, shall have effect as if the entire rent were the apportioned rent ; or

(ii) discharged or exonerated from the entire rent—

then paragraph (B) (ii) or (D) (ii) of the last subsection, as the case may require, shall have effect as if the entire rent were the balance of the rent, and the words "other than the covenant to pay the entire rent" had been omitted.

Lease not affected.

(3) In this section "conveyance" does not include a demise by way of lease at a rent.

Trustee, &c., may incorporate certain covenants.

(4) Any covenant which would be implied under this section by reason of a person conveying or being expressed to convey as beneficial owner may, by express reference to this section, be implied, with or without variation, in a conveyance, whether or not for valuable consideration, by a person who conveys or is expressed to convey as settlor, or as trustee, or as mortgagee, or as personal

representative of a deceased person, or as committee of a lunatic, or as receiver of a defective, or under an order of the court.

(5) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested. Benefit of covenant.

(6) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such variations or extensions were directed in this section to be implied. Variation of covenant.

(7) In particular any covenant implied under this section may be extended by providing that— Power to charge land.

(a) the land conveyed; or

(b) the part of the land affected by the rentcharge which remains vested in the covenantor; or

(c) the part of the land demised which remains vested in the covenantor;

shall, as the case may require, stand charged with the payment of all money which may become payable under the implied covenant.

(8) This section applies only to conveyances made after the commencement of this Act.

The above section, so far as it renders unnecessary the insertion of the usual express covenants, shortens conveyances on sale of freeholds subject to a rentcharge or of leaseholds. It will be noted that by sub-sect. (4) the covenants implied by a person conveying "as beneficial owner" may even in conveyances not for value, "by express reference to this section" be incorporated by reference by a person conveying "as settlor," "as trustee," &c.

As to the covenants implied on the transfer (otherwise than by way of under-lease) of any leasehold interest in land under the L. R. Act, 1925, unless there is an entry in the Register negativing such implication, see sect. 24 and L. R. Rules, 1925, r. 117. Covenants implied on dispositions of registered land.

As to other dispositions of registered land it is provided that the provisions as to the execution of a conveyance on sale contained in the L. P. Act, 1925, are to apply to transfers of sale of registered land, and Rules may be made for prescribing the effect of covenants implied by virtue of the L. P. Act, 1925, in dispositions of registered land (L. R. Act, 1925, sect. 38), and see L. R. Rules, 1925, r. 109, as to the implied covenants in a transfer of freehold land subject to a rent.

The provision in sect. 60 of the C. Act, 1881, as to the effect of a covenant with two or more jointly is replaced by sect. 81 of the L. P. Act, 1925, with the addition of these words, "and where made after the commencement of this Act shall be con- Effect of covenant with two or more jointly.

strued as being made also with each of them." Where, therefore, A. covenants with B. and C. the words " and with each of them " may now be omitted.

Covenant by a person with himself and others.

It had been held that a covenant by one person with himself and others jointly was void (*Napier* v. *Williams*, [1911] 1 Ch. 361), on the ground that a person cannot agree with himself. It was, therefore, the practice where A. conveyed land to himself and B. and gave an implied statutory covenant for title, to insert a clause to the effect that the implied covenant should be construed as having been made with B. alone. This practice can now be discontinued, having regard to sect. 82 of the L. P. Act, 1925, which is as follows :—

L. P. Act, 1925, s. 82.

> **82.**—(1) Any covenant, whether express or implied, or agreement entered into by a person with himself and one or more other persons shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.
>
> (2) This section applies to covenants or agreements entered into before or after the commencement of this Act, and to covenants implied by statute in the case of a person who conveys or is expressed to convey to himself and one or more other persons, but without prejudice to any order of the court made before such commencement.

Restrictions on user of land.

The law as to restrictions on the user of land has hitherto been interpreted (not always consistently) by numerous judicial decisions (the consideration of which is outside the scope of this work) and is now the subject of direct statutory enactment.

Purchaser how affected by notice.

As to an agreement restrictive of the user of land made before 1926, a purchaser of a legal estate takes subject thereto only if he has notice thereof (L. P. Act, 1925, sect. 2, sub-sect. (5)), but if made after 1925 the agreement (if not made between a lessor and lessee) is a land charge capable of registration (L. C. Act, 1925, sect. 10, sub-sect. (1), Class D. (ii)) and is void against a purchaser of the land unless registered before the completion of the purchase (L. C. Act, 1925, sect. 13, sub-sect. (2)). The benefit of such an agreement is not such an equitable interest as, irrespective of notice, will be over-reached by a conveyance to a purchaser of a legal estate (L. P. Act. 1925, sect. 2, sub-sects. (1), and (3) (ii)).

Statutory powers for discharging or modifying restrictive covenants.

Wide powers for the discharge or modification of restrictive covenants are now given to the official arbitrators appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919, particularly in cases where by reason of changes in the character of the property or of the neighbourhood, the restrictions have, for practical purposes, become obsolete (L. P. Act. 1925, sect. 84).

Covenants relating to, or running with, land.

The law affecting covenants relating to land is not altogether clear, and it is often difficult, especially as regard the passing of the benefit and the burden, to say what is the legal effect of such covenants. The former statutory provisions as to this subject have now been extended by the L. P. Act, 1925. The new provisions should be carefully examined, but may be summarised as follows :—(1) A covenant made or implied after 1881 binds the real estate as well as the personal estate of the covenantor : (2) A covenant relating to land of the covenantee is deemed to be made with the owners and occupiers for the time being of that land : (3) No technical expression need be used to make the benefit of a covenant relating to land run with the land if before 1926 " the covenant is of such a nature that the benefit could have been made to run with the land " : (4) A covenant relating to land of a covenantor is deemed to be made on behalf of [*Query* so as to bind] the owners or occupiers for the time being of that land : (5) A covenant runs with land when the benefit or burden passes to the successors in title of the covenantee or covenantor (see L. P. Act, 1925, sects. 78, 79 and 80).

The general effect of these provisions appears to be that the addition in a covenant by A. of such words as " for himself and his assigns " or " so as to bind the owners and occupiers of the land of the covenantor," or of a covenant with B. the addition of such words as " and his assigns " or " so as to run with the land " is now unnecessary.

General words implied in conveyance of land, buildings or manor.

Until 1882 it was usual, after the specific description of the parcels, to add what were known as " general words " mentioning, in more or less detail, the things, rights, easements, &c., which were appurtenant (actually, or by reputation or enjoyment) to and were intended to pass by the conveyance.

By sect. 6 of the C. Act, 1881 (set out in the preceding edition), these words were imported by implication into every conveyance made since 1881. This provision is re-enacted (with the addition in the conveyance of a manor of " other manorial incidents ") by sect. 62 of the L. P. Act, 1925.

It was held that sect. 6 of the C. Act, 1881, did not affect the rights of persons not parties to the conveyance (*Broomfield* v. *Williams*, [1897] 1 Ch. 602).

The statutory general words do not (except as regards manors) expressly include mines and minerals. But the omission is of no importance, as they, being part of the inheritance, must pass with the land unless expressly reserved or excepted, though in some cases (*e.g.*, that of a lease not containing any such reservation) the right to work them may be in abeyance.

Formerly mines and minerals were commonly (though by no means invariably) expressly mentioned amongst the general words then in use, and the omission to mention them in a conveyance of land in a mining district might have implied that they had been reserved on some previous dealing with the property. But, except perhaps for the purpose of negativing such an implication, they were wholly unnecessary; and in conveyances of land in purely agricultural districts were frequently — perhaps generally — omitted. In conveyances of land in mineral districts it is still not unusual to mention them, for the purpose of precluding the implication above referred to, but if they are mentioned alone it may be desirable to exclude any application of the rule *expressio unius est exclusio alterius* (see *Beddington* v. *Atlee* (1887), 35 Ch. D. 317). However, the section applies if and so far as a contrary intention is not *expressed* in the conveyance (sub-sect. (4)).

It should also be noticed that the statutory general words do not extend, like those formerly in use, to rights and easements enjoyed with or known as appurtenant to the property *at any time previously* to the conveyance. In this respect, the statutory general words seem the more correct, as the property is intended to be dealt with in its actual condition at the time of the conveyance; and, in fact, it may be doubted whether the reference to earlier reputed rights and easements ever had any value (see *Roe* v. *Siddons*, 22 Q. B. D. 224).

Regard being had to this section, it will generally be improper to mention appurtenances in a contract for sale of land, for the effect of so doing might be to invite a discussion upon the nature and extent of the general words to which a purchaser was entitled before the Act (*Hansford* v. *Jago*, [1921] 1 Ch. 322. See also *Westwood* v. *Heywood*, [1921] 2 Ch. 130; *White* v. *Williams*, [1922] 1 K. B. 727).

A way which has been used by a vendor connecting the land sold with a public highway does not necessarily pass to the purchaser. Whether it was or was not intended to pass is a question of construction on the whole contract. If it was not so intended, not only is the purchaser not entitled to insert in the conveyance an express right of way, but it has been held that the vendor can insert a clause excluding the operation of this section: *Re Walmsley and Shaw*, [1917] 1 Ch. 93. As to an abandoned way, see *Swan* v. *Sinclair*, [1925] A. C. 227. See also *Long* v. *Gowlett*, [1923] 2 Ch. 177, as to whether the general words implied would pass a right of a purchaser of part of land, previously belonging with the other part to one owner, to go on such other part to clear a millstream and repair its banks.

In old forms of conveyance, immediately following the general words was inserted what was known as the "all estate clause." This clause was rendered unnecessary by virtue of sect. 63 of the C. Act, 1881, which is now replaced by sect. 63 of the L. P. Act, 1925. All estate clause.

The clause which sect. 63 of the C. Act, 1881 superseded was intended and supposed to meet those cases in which the conveying party had a term of years or some other interest in the property, distinct from his estate, as appearing in the deed, and which might be held not to pass except by virtue of the clause. The ordinary clause (which is followed in the section) had been shown by the decisions in *Neame* v. *Moorsom*, (1866) L. R. 3 Eq. 91, and *Francis* v. *Minton*, (1867) L. R. 2 C. P. 543; to be ineffective for its intended purpose (see also, as to tithes, *Chapman* v. *Gatcombe*, (1836) 2 Bing. N. C. 516), and to be, therefore, surplusage, and was frequently omitted. The section has consequently no substantial effect, except by encouraging the omission of a superfluous clause, unless it should be held that the principle of the decisions referred to is not applicable to it (see, however, *Thellusson* v. *Liddard*, [1900] 2 Ch. 635, where equitable interests were held to pass by virtue of the section; and also *Price* v. *John*, [1905] 1 Ch. 744). And where there is any real reason to think that the conveying party may have some interest beyond what appears in the deed, further words sufficient to convey such interest should be added.

Previously to 1882 it was necessary in a legal limitation of an estate in fee simple to use the word "heirs," and, in the absence of words of inheritance, a life estate only passed (see Year Books, 20 H. 6, fol. 36). But this rule was altered by sect. 51 of the C. Act, 1881, which provided that in a deed executed after 1881 it was sufficient, in the limitation of an estate in fee simple, to use the words "in fee simple," and of an estate in tail, in tail male, &c., the words "in tail," "in tail male," &c. Words of limitation under former law.

Before 1926 it was still necessary that either the word "heirs" or the expression "in fee simple" should be used (*Re Dickson*, [1921] 2 Ch. 108, at p. 118), and the words "in fee" alone were held to be insufficient (see *Re Ethel and Mitchell*, [1901] 1 Ch. 945); and in *Re Ford and Ferguson*, [1906] 1 I. R. 607, the Court refused to supply the words "heirs and assigns" from an interpretation clause.

The rule that in the absence of words of inheritance the grantee took only a life estate was applicable, with certain exceptions, to equitable limitations: see *Re Bostock*, [1921] 2 Ch. 469. Equitable limitations.

In the case of corporations a fee-simple estate was properly In the case of corporations.

limited (a) in the case of a corporation sole (*e.g.*, a bishop) to him "and his successors and assigns"; (b) in the case of a corporation aggregate (*e.g.*, a limited company or a local authority) to such corporation "and their assigns," but the words "in fee simple" were sometimes added, and did no harm, merely indicating the nature of the estate intended to be conveyed.

Fee simple may now pass without words of limitation.

Now, by sect. 60 of the L. P. Act, 1925, in the case of deeds executed after 1925, freehold land may be conveyed so as to pass the fee simple without the use of any words of limitation.

The section is as follows :—

L. P. Act, 1925, s. 60.

60.—(1) A conveyance of freehold land to any person without words of limitation, or any equivalent expression, shall pass to the grantee the fee simple or other the whole interest which the grantor had power to convey in such land, unless a contrary intention appears in the conveyance.

(2) A conveyancer of freehold land to a corporation sole by his corporate designation without the word "successors" shall pass to the corporation the fee simple or other the whole interest which the grantor had power to convey in such land, unless a contrary intention appears in the conveyance.

(3) In a voluntary conveyance a resulting trust for the grantor shall not be implied merely by reason that the property is not expressed to be conveyed for the use or benefit of the grantee.

(4) The foregoing provisions of this section apply only to conveyances and deeds executed after the commencement of this Act:

Provided that in a deed executed after the thirty-first day of December, eighteen hundred and eighty-one, it is sufficient—

(a) In the limitation of an estate in fee simple, to use the words "in fee simple," without the word "heirs";

(b) In the limitation of an estate tail, to use the words "in tail" without the words "heirs of the body"; and

(c) In the limitation of an estate in tail male or in tail female, to use the words "in tail male" or "in tail female," as the case requires, without the words "heirs male of the body," or "heirs female of the body."

From sub-sects. (1) and (2) it appears that the fee simple "shall" pass unless a contrary intention appears in the conveyance. To prevent doubt, and having regard to the proviso to sub-sect. (4), the practice of expressly limiting the estate "in fee simple" will probably in most cases still be followed. Similarly in the case of limitations in fee simple to corporations sole the use of the word "successors" may usefully be retained as indicating that the grantee is intended to take in his corporate as opposed to his private capacity.

As to corporations sole.

As to corporations aggregate.

In the case of corporations aggregate the use of the word "successors" was always meaningless (*Re Woking, &c., Act*, [1914] 1 Ch. 300), but although the phrase "in fee simple" as

applied to such a corporation, which upon dissolution ceases to exist (but see now L. P. Act, 1925, sect. 181), may be objected to as inappropriate, yet it may still be conveniently used.

Voluntary conveyance.

The provision in sub-sect. (3) as to voluntary conveyances materially affects, if it does not altogether abrogate, the old rule at common law (apart from the Statute of Uses) that a feoffment to a stranger without consideration raised a use or trust in favour of the feoffor (see *per* Nottingham, L.C., in *Grey* v. *Grey* (1677), 2 Sw. 594).

Sale of settled land under the old law.

In the case of sales of settled land it will be remembered that under the S. L. Acts of 1882 to 1890 a tenant for life, or person having the powers of a tenant for life (notwithstanding any assignment of, or incumbrance upon, his beneficial interest, but subject to the rights of assignees and incumbrancers), had power to sell the settled land or any part thereof, with a restriction as to the principal mansion-house and park, and as to heirlooms settled with the land, with power to complete the sale by conveyance. The purchase-money had to be paid either to the trustees of the settlement or into Court at the option of the tenant for life, but in the former case not to fewer than two persons, unless the settlement authorised the receipt of capital money by one trustee. Not less than one month's notice in writing of the intended sale had to be given to each of the trustees of the settlement, of whom for this purpose there must be two, unless a contrary intention was expressed in the settlement, and to the solicitor (if any) of the trustees; but purchasers in good faith were not bound to see to the giving of this notice, and were generally protected. Ancillary powers of entering into contracts for sale to be binding on the land, of transferring any incumbrance on the land sold to any other part of the settled land with the consent of the incumbrancer, and of dedicating parts of the settled land for the general benefit of the residents upon it, were also given to the tenant for life, who, in exercising the powers of the Act, was to be deemed a trustee for all parties entitled under the settlement, the trustees of the settlement being specially and generally protected in relation to his acts and otherwise, but being at liberty to refer differences to the Court. These powers were made exercisable by various other limited owners, and on behalf of an infant seised of, or entitled in possession to land, or being a tenant for life, or a person having the powers of a tenant for life under the Act, by the trustees of the settlement; and as regards married women, either by the woman alone or by herself and her husband, according as she was or was not entitled for her separate use; and as regards lunatics so found by inquisition by their committees.

Corresponding provisions were made for the case of a settlement by way of trust for sale, but (by the Act of 1884, sect. 7) the powers conferred in respect of such a settlement were not to be exercised without the leave of the Court.

— under the new law.

The above-mentioned powers (with the alterations and exceptions to be noticed) are substantially re-conferred by the S. L. Act, 1925, on a tenant for life of settled land, with the important difference that he does not exercise them as tenant for life, but as the person in whom the legal estate in fee simple (or for a term in the case of leaseholds) is vested upon the trusts declared by the trust instrument, for in settlements made after 1925 his beneficial interest in the settled land under the trust instrument is not disclosed to a purchaser of the legal estate.

— behind trust for sale.

Settlements of land behind a trust for sale are now outside the S. L. Act, 1925, altogether : see note to Precedent V.

The powers of a tenant for life are now enlarged in some particulars by the S. L. Act, 1925 (see Pt. II. generally), and the following alterations in the general law may be noticed.

— by married woman.

The powers are exercisable by a married woman without her husband, whether or not entitled for her separate use (S. L. Act, 1925, sect. 25).

— in case of lunatic or defective.

Where the tenant for life is a lunatic or a defective, the powers are exercisable by his committee or receiver under an order in Lunacy, S. L. Act, 1925, sect. 28).

Sale of mansion and park.

The mansion-house and park may be sold without the consent of the trustees or an order of the Court (a) if the settlement, if coming into operation before 1926, expressly so provides, or (b) unless the settlement, if coming into operation after 1925, expressly provides to the contrary (see S. L. Act, 1925, sect. 65, for the exact wording of this enactment).

— of heirlooms.

Personal chattels (including chattels settled as "heirlooms," which word is not defined) which are settled so as to devolve with the settled land cannot be sold or purchased without an order of the Court.

Assignment of life interest.

As to the effect now of an assignment of or incumbrance upon the life interest, see CONSENTS, General Remarks, pp. 79, &c.

Payment of capital money.

Capital money arising from the sale of settled land must be paid to not less than two trustees, notwithstanding anything to the contrary in the vesting or trust instrument, except where the trustee is a trust corporation (S. L. Act, 1925, sect. 18, subsect. (1) (c)).

Effect of conveyance on sale of settled land.

The mode of effecting and the effect of a conveyance on sale of settled land by a person having the powers of a tenant for life are now regulated by sect. 72 of the S. L. Act, 1925 (which also applies to exchanges, leases, mortgages, charges and other dis-

positions). This section is important in so far as it indicates what estates or interests are not overridden by the conveyance, and should be compared with sect. 20 of the S. L. Act, 1882, which it replaces.

PRECEDENTS.

I.

CONVEYANCE *in* FEE SIMPLE *by an* ABSOLUTE OWNER *without Recitals* (*a*).

PRECEDENT I. IN FEE SIMPLE WITHOUT RECITALS.

THIS CONVEYANCE made the —— day of ——, BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part (*b*), WITNESSETH, that, in consideration of the sum of £—— paid by the purchaser to the vendor for the purchase of the fee simple in possession free from incumbrances of the hereditaments hereinafter described (the receipt whereof the vendor doth hereby acknowledge), the vendor AS BENEFICIAL OWNER Doth hereby convey unto the purchaser, ALL THOSE [ALL THAT messuage or—— house, land and [*or* piece or parcel of land] and] hereditaments described in the Schedule hereto (*c*), TO HOLD UNTO the purchaser in fee simple (*d*). [*Acknowledgment, &c., as to documents retained*, p. 23], [And it is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds £500 (*e*)]. IN WITNESS, &c.

Certificate if not over £500).

SCHEDULE—*Description of hereditaments.*

(*a*) As to this and the following Precedents, reference should be made to the General Remarks above.

(*b*) Generally recitals of seisin and of the agreement for sale are added: see next Precedent.

(*c*) For other descriptions of property, see PARCELS. If the property be in a mineral district, the words "Together with the mines and minerals within and under the same" may be added (see General Remarks above).

(*d*) The words "in fee simple" will, no doubt, still be generally inserted although not now strictly essential (see General Remarks above).

(*e*) Where the consideration does not exceed £500 and the conveyance is not a part of a larger transaction in respect of which the consideration exceeds that sum, this statement should be inserted for the purpose of avoiding the increased stamp duty otherwise payable under the Finance (1909-10) Act, 1910, sect. 73. See Revenue Act, 1911, sect. 15. All that sect. 73 requires is that "the instrument contains a statement certifying" &c. Where, therefore, the deed contains recitals it may be more convenient to add the certificate as a last recital, saying "AND WHEREAS it is hereby certified," &c.

II.

PRECEDENT II.

THE SAME WITH RECITALS.

The same with RECITALS.

THIS CONVEYANCE, made the —— day of ——, BETWEEN A., of, &c., (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS the vendor is seised of the hereditaments hereinafter described for an estate in fee simple in possession free from incumbrances and has agreed to sell the said hereditaments to the purchaser for a like estate at the price of £——. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge), the vendor AS BENEFICIAL OWNER Doth hereby convey unto the purchaser ALL THOSE [*parcels, see* PARCELS] TO HOLD unto the purchaser in fee simple. [*Acknowledgment as to deeds retained*, p. 23. *Certificate if not over* £500, p. 149.] IN WITNESS, &c.

Recital of seisin;

— of agreement for sale.

Conveyance.

SCHEDULE—*Description of hereditaments.*

III.

PRECEDENT III.

BY MARRIED WOMAN SEISED IN FEE SIMPLE UNDER THE OLD LAW.

CONVEYANCE *by a* MARRIED WOMAN *seised in* FEE SIMPLE *under the Old Law* (*f*).

THIS CONVEYANCE, made, &c., BETWEEN A. B., of, &c., and D. B., his wife [*vendors*], of the one part, and C. D., of, &c. [*purchaser*], of the other part, WITNESSETH, that in consideration of the sum of £—— paid by the said C. D. to the said A. B. and D. B. for the purchase of the fee simple in possession free from incumbrances of the hereditaments hereinafter conveyed (the receipt whereof the said A. B. and D. B. do hereby acknowledge), she the said D. B. AS BENEFICIAL OWNER, with the concurrence of the said A. B., Doth hereby grant, dispose of (*g*), and convey, and he, the said A. B. AS BENEFICIAL

(*f*) If the woman, having been married before 1883, acquired her title to the property after 1882, or if she was married after 1882, the property will, under the M. W. P. Act, 1882, belong to her for her separate use, and be capable of being disposed of by her, as if she were a *feme sole*. In all other cases this Precedent will be appropriate.

(*g*) See sect. 77 of the Fines and Recoveries Act, 1833, to the effect that a married woman, with her husband's concurrence and her acknowledgment, may "dispose of" land. Her acknowledgment is now unnecessary, but the concurrence of the husband is not dispensed with: See L. P. Act, 1925, s. 167.

OWNER Doth hereby convey and confirm unto the said C. D. [*parcels, see* PARCELS] TO HOLD unto the said C. D. in fee simple. [*Acknowledgment as to deeds retained*, p. 23. *Certificate if not over* £500, p. 149.] IN WITNESS, &c.

SCHEDULE—*Description of hereditaments.*

PRECEDENT III.

BY MARRIED WOMAN SEISED IN FEE SIMPLE UNDER THE OLD LAW.

IV.

CONVEYANCE *of* FREEHOLDS *by* APPOINTMENT *under a* GENERAL POWER SUBJECT *to a* LEASE. *Variations for* APPORTIONMENT *of the* RENT (*h*).

PRECEDENT IV.

BY APPOINTMENT.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part, WITNESSETH, that in consideration of the sum of £—— paid by the purchaser to the vendor, for the purchase of the hereditaments hereinafter appointed for an estate in fee simple in possession free from incumbrances, but subject to the lease hereinafter mentioned (the receipt whereof the vendor doth hereby acknowledge), the vendor, in exercise of a power given to him by a Settlement dated, &c. [*before* 1926], and of all other powers, Doth hereby appoint (*i*), and by virtue of a Vesting Deed dated, &c. [*after* 1925], according to his estate and interest and AS BENEFICIAL OWNER Doth hereby convey unto the purchaser, ALL THAT messuage or farmhouse and farm with the several cottages and parcels of land belonging thereto, known as —— Farm, situate in the Parish of ——, in the County of ——, particulars whereof are contained in the First Schedule hereto, and delineated (by way only of identification) on the plan hereto and thereon coloured ——, such Schedule and plan being

Appointment.

Parcels.

(*h*) In this Precedent the vendor is assumed to have reserved a general power of appointment, and, subject to the power, to have settled the land on himself for life, etc.

(*i*) In exercising a power, it is best to take the operative words given in the power. The power supposed in the text requires no formalities; but if it does require formalities, it is unnecessary to describe in the witnessing part the intended mode of execution, but attention should be called to them by a note in note in the margin of the draft. By the L. P. Act, 1859, s. 12, a deed executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed was made valid as an execution of a power of appointment by deed or any writing not testamentary, although other formalities may have been required by the instrument creating the power; but in practice the formalities, if known, are usually adhered to. This section is now repealed, but is replaced by sect. 159 of the L. P. Act, 1925.

PRECEDENT IV.

BY APPOINTMENT.

respectively extracts from the tithe apportionment and map [*or* taken from the Ordnance Survey —— edition] (*k*) TO HOLD unto [and in trust for (*l*)] the purchaser in fee simple Subject to a lease (*m*) thereof dated the —— day of ——, and made the —— day of ——, between ——, whereby the said hereditaments [with other hereditaments] were demised to ——, for —— years from the —— day of ——, at the yearly rent of £——, but with the benefit of the [yearly sum of £—— as an apportioned part (*n*) of the] said rent, and of the covenants by the lessee, and conditions in the said lease contained [so far as the same relate to or affect the said premises hereinbefore appointed, regard being had to the apportionment aforesaid]. AND THE vendor doth hereby acknowledge the right of the purchaser to production and to delivery of copies of the documents mentioned in the Second Schedule hereto, and doth hereby undertake the safe custody thereof (*o*). [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

Habendum to purchaser in fee simple

Subject to lease.

Acknowledgment, &c., as to documents.

FIRST SCHEDULE—*Description of hereditaments.*

SECOND SCHEDULE—*Documents retained by vendor.*

(*k*) Compare the forms under PARCELS.

(*l*) The words of the power presumably were "to such uses upon such trusts, etc., as the said — shall appoint" or to that effect. The words "and in trust for" may be substituted for "and to the use of," for it is enacted by sect. 1, sub-sect. (9) of the L. P. Act, 1925, as follows:—"The provisions in any statute or other instrument requiring land to be conveyed to uses shall take effect as directions that the land shall (subject to creating or reserving thereout any legal estate authorised by this Act which may be required) be conveyed to a person of full age upon the requisite trusts."

(*m*) As to the express recognition by the purchaser of the subsistence of the lease amounting to a waiver of past breaches of covenant, see *Davenport* v. *Smith*, [1921] 2 Ch. 270; and as to the rights of assignees of reversions generally, see *Blane* v. *Francis*, [1917] 1 K. B. 252; *Cole* v. *Kelly*, [1920] 2 K. B. 106; *Atkin* v. *Rose*, [1923] 1 Ch. 522, and see now L. P. Act, 1925, s. 141. As to their obligations, see *Barnes* v. *City of London, &c. Co.*, [1918] 2 Ch. 18, and see now L. P. Act, 1925, s. 142; and as to apportionment on severance of the reversion, see now L. P. Act, 1925, s. 140.

(*n*) As to the effect of a severance of the reversion, see *Mitchell* v. *Morley*, [1914] 1 Ch 438; and L. P. Act, 1925, ss. 140 to 142.

(*o*) SEE ACKNOWLEDGMENTS (PRODUCTION OF DEEDS). It is assumed that the vendor retains not only the settlement by which his power of appointment was reserved, but also the vesting deed and other documents (*e.g.*, the counterpart of the lease, if including other property) relating to property other than that comprised in the purchase. The vendor here gives the undertaking for safe custody as also full covenants for title.

V.

CONVEYANCE *in Contemplation of* MARRIAGE, *of a* FREEHOLD IN TRUST *for* SALE, *with a* DECLARATION *of* TRUST *of the* PURCHASE-MONEY *by reference to a* SETTLEMENT *of* EVEN DATE (*p*).

PRECEDENT V.

CONVEYANCE, ON MARRIAGE, OF FREEHOLDS IN TRUST FOR SALE.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended wife*], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (herein called "the trustees," which expression where appropriate includes the trustees or trustee for the time being of these presents), of the third part, WITNESSETH, that, in consideration of a marriage intended shortly to be solemnized between the said A. (herein called "the husband") and the said B. (herein called "the wife").

Conveyance to trustees.

1. The wife, AS SETTLOR and with the approbation of the husband, Doth hereby convey unto the trustees, ALL THOSE, &c. [*see* PARCELS], TO HOLD unto the trustees in fee simple, IN TRUST for the wife in fee simple, until the intended marriage.

In trust for wife till marriage.

After marriage in trust for sale.

2. AFTER the solemnization thereof the trustees shall, with the consent in writing of the husband and the wife during their joint lives, and of the survivor during his or her life, and after the death of such survivor at the discretion of the trustees, sell the premises, but with power to postpone such sale.

Trusts of proceeds of sale and of rents, &c.

3. The trustees shall hold the money to arise from any such sale (after payment thereout of all expenses), and also the rents and profits of the same premises or of the unsold part thereof for the time being upon such trusts, and subject to such powers and provisions, as shall be declared of the same respectively by a Deed already engrossed, and intended to bear even date

---

(*p*) A simple trust to sell, with a nomination of the persons (if any) with whose consent, and an intimation of the time when, the sale is to be made is now sufficient, sect. 12 of the T. Act, 1925 rendering further powers as to mode of sale superfluous. The trust for sale is none the less imperative because the sale is to be made "with the consent of" or "at the request of" the persons mentioned; see *Re Ffennell*, [1918] 1 Ch. 91. Compare the definitions of "trust for sale" and "power to postpone a sale" in L. P. Act 1925, sect. 205, sub-sect. (1) (xxix).

As to dispositions on trust for sale generally, see sects. 23 to 33 of the L. P. Act, 1925. The trustees now have the powers of a tenant for life and the trustees of a settlement under the S. L. Act, 1925 (see L. P. Act, 1925, sect. 28), but land held on trust for sale is no longer settled land, sect. 63 of the S. L. Act, 1882, and sect. 7 of the S. L. Act, 1884, having been repealed and not replaced. As to the power of an estate owner to dispose of his estate upon trust for sale so as to overreach certain equitable interests, see L. P. Act, 1925, sect. 2, sub-sects. (1) (ii) and (2) set out under ABSTRACTS, General Remarks, but in that case the trustees must be approved or appointed by the Court or the trustee must be a trust corporation.

PRECEDENT V.

CONVEYANCE, ON MARRIAGE, OF FREEHOLDS IN TRUST FOR SALE.

herewith and to be made between the same persons as are parties hereto (*q*), and to be executed immediately after these presents.

Power to appoint new trustees.

4. The persons hereby nominated for the purpose of appointing any new trustee of these presents shall be the husband and the wife during their joint lives and the survivor during his or her life.

IN WITNESS, &c.

SCHEDULE—*Description of hereditaments.*

VI.

PRECEDENT VI.

BY TRUSTEES FOR SALE OF LAND HELD IN UNDIVIDED SHARES BEFORE 1926.

CONVEYANCE *by* **TRUSTEES FOR SALE** *who before* **1926** *were beneficially entitled in* **UNDIVIDED SHARES** *as* **TENANTS IN COMMON** (*r*).

THIS CONVEYANCE, made the —— day of ——, BETWEEN A., of, &c., and B., of, &c. (herein called "the vendors"), of the one part, and C., of, &c. (herein called "the purchaser"), of the other part.

Recital of devise to tenants in common.

WHEREAS D., by his Will dated the —— day of ——, after appointing E. and F. his executors, devised the hereditaments hereinafter described (*s*) to the vendors as tenants in common in equal shares, and died on the —— day of —— [*before* 1926], being then seised of the said hereditaments for an estate in fee simple in possession free from incumbrances, and his said Will was proved on the —— day of —— in the —— Registry by the executors therein named.

—— of assent by executors.

AND WHEREAS [by an instrument in writing dated the —— day of ——] the said executors have assented to the said devise (*t*).

— as to statutory trusts.

AND WHEREAS by virtue of the Law of Property Act, 1925, the vendors hold the said hereditaments as joint tenants upon the statutory trusts (*u*).

(*q*) The Deed referred to will be found under SETTLEMENTS.

(*r*) The case here supposed is provided for in Part IV. of the First Schedule to the L. P. Act, 1925, set out in PARTITIONS under General Remarks.

(*s*) If the description in the will is not the same as the description in the Schedule, add "which in the said will were described as follows," &c., giving the words in the will.

(*t*) See A. E. Act, 1925, sect. 36, sub-sect. (2), set out in ASSENTS, under General Remarks. If the assent was given after 1925, it must, to pass the legal estate, have been in writing. If the assent was before 1926 and merely implied, it might be prudent to add the executors as parties to testify their assent.

(*u*) See L. P. Act, 1925, First Schedule, Pt. IV. sect. 1, sub-sect. (2).

PRECEDENT VI.

BY TRUSTEES FOR SALE OF LAND HELD IN UNDIVIDED SHARES BEFORE 1926.

AND WHEREAS the vendors have agreed to sell to the purchaser at the price of £—— the fee simple in possession free from incumbrances of the hereditaments hereinafter described.

—— of agreement to sell.

NOW THIS DEED WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchaser to the vendors as such trustees as aforesaid (the receipt whereof the vendors do hereby acknowledge), the vendors AS TRUSTEES, in exercise of the trust for sale by law implied and of all other powers Do hereby convey unto the purchaser ALL THOSE hereditaments described in the Schedule hereto [*see* PARCELS] TO HOLD unto the purchaser in fee simple. [*Acknowledgment as to documents*, p. 149. *Certificate if not over* £500, p. 23.] IN WITNESS, &c.

Conveyance.

SCHEDULE—*Description of hereditaments.*

VII.

CONVEYANCE *to a* SUB-PURCHASER.

PRECEDENT VII.

TO A SUB-PURCHASER.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c., (herein called "the vendor"), of the first part, B., of, &c. (herein called "the original purchaser"), of the second part, and C., of, &c. (herein called "the sub-purchaser"), of the third part. WHEREAS the vendor is seised of the hereditaments hereinafter described in fee simple in possession free from incumbrances and lately agreed with the original purchaser for the sale to him of the said hereditaments for a like estate for the sum of £100, but no conveyance thereof has been made to the original purchaser.

Recital of seisin and of contract for sale, to original purchaser;

AND WHEREAS the original purchaser has agreed with the sub-purchaser for the sale to him of the said hereditaments for the like estate at the price of £150.

—and for sale to sub-purchaser.

NOW THIS DEED WITNESSETH that in pursuance of the said agreements and in consideration of the sum of £150 paid by the sub-purchaser as to £100 part thereof to the vendor at the request of the original purchaser (the receipt of which sum of £100 the vendor doth hereby acknowledge), and as to £50, the residue thereof, to the original purchaser (the receipt of which sum of £50 the original purchaser doth hereby acknowledge), the vendor, AS BENEFICIAL OWNER, at the request of the original purchaser, Doth hereby convey, and the original purchaser, AS BENEFICIAL OWNER, Doth hereby convey and confirm unto the sub-purchaser [*see* PARCELS], TO HOLD unto the sub-purchaser in fee simple.

Conveyance to sub-purchaser.

PRECEDENT VII.

TO A SUB-PURCHASER.

[*Acknowledgment, &c., by A., as to documents*, p. 23. *Certificate if not over* £500, p. 149.] (*x*).

SCHEDULE—*Description of hereditaments.*

VIII.

PRECEDENT VIII.

BY MORTGAGOR AND MORTGAGEE.

CONVEYANCE *of* FREEHOLDS *by* MORTGAGOR *and* MORTGAGEE *where* MORTGAGE *created after* 1925, *with* VARIATIONS *where created before* 1926.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the mortgagee"), of the first part, B., of, &c. (herein called "the vendor"), of the second part, and C., of, &c. (herein called "the purchaser"), of the third part.

Recital of mortgage.

WHEREAS, by a Mortgage (herein called "the mortgage") dated, &c. [*after* 1925, *with variations in brackets if made before* 1926], and made between the vendor, of the one part, and the mortgagee, of the other part, the vendor demised [conveyed] the hereditaments hereinafter described [together with other hereditaments], unto the mortgagee for a term of 3,000 years from the date thereof without impeachment of waste [in fee simple], subject to a proviso for redemption on payment to the mortgagee of the sum of £——, with interest as therein mentioned. [AND WHEREAS by virtue of the Law of Property Act, 1925, the said hereditaments are now vested in the mortgagee for a term of 3,000 years as from the 1st day of January, 1926, without impeachment of waste, but subject to a provision for cesser corresponding to the right of redemption then subsisting with respect to the fee simple and the fee simple is now vested in the

Contract for sale.

vendor subject to the said term (*y*).] AND WHEREAS the vendor

(*x*) The conveyance is to be charged with *ad valorem* duty in respect of the consideration moving from the sub-purchaser (Stamp Act, 1891, sect. 58, sub-sect. (4)). This is the case, it would seem, even though sold to the sub-purchaser for less than the original price, the balance being paid by the original purchaser to the vendor. As to the stamp where the property originally bought is re-sold in lots to different persons, see Stamp Act, 1891, sect. 58, sub-sect. (5), and *Maples* v. *I. R. Commrs.*, [1914] 3 K. B. 303.

(*y*) See L. P. Act, 1925, First Schedule, Pt. VII., para. 1. If instead of a mortgage by demise the mortgage was created by a charge by deed expressed to be by way of legal mortgage the recital will be:

"WHEREAS by a Legal Charge (herein called "the legal charge) dated, &c., [*after* 1925] and made between, &c., the vendor by way of Legal Mortgage the hereditaments hereinafter described with payment to the mortgagee of the sum of £—— with interest as therein mentioned." The expression "legal charge" will be substituted for "mortgage" throughout.

See next Precedent where the chargee sells under his statutory power of sale.

PRECEDENT VIII.

BY MORTGAGOR AND MORTGAGEE.

has agreed with the purchaser for the sale to him of the said hereditaments, in fee simple in possession, free from incumbrances, for the sum of £——. AND WHEREAS the said principal sum of £—— is now owing to the mortgagee, but all interest thereon has been paid down to the date of these presents (*z*), and it has been agreed that the sum of £—— part of the said purchase-money shall be paid to the mortgagee in satisfaction of the said mortgage debt (*a*), and that he shall join in these presents in manner hereinafter appearing. NOW THIS DEED WITNESSETH, that in pursuance of the said agreements, and in consideration of the sum of £——, paid by the purchaser to the mortgagee at the request of the vendor (the receipt whereof the mortgagee doth hereby acknowledge), and of the sum of £——, paid by the purchaser to the vendor (the payment and receipt respectively of which said sums of £—— and £——, making together the said purchase-money of £——, the vendor doth hereby acknowledge), the mortgagee, AS MORTGAGEE, by the direction of the vendor, doth hereby release, surrender, and assign, and the vendor, AS BENEFICIAL OWNER, doth hereby convey and confirm, unto the purchaser [*see* PARCELS], TO HOLD unto the purchaser, in fee simple, DISCHARGED from all principal money and interest secured by, and from all claims under, the mortgage TO THE INTENT that the term created by the mortgage may, as regards the hereditaments hereby conveyed, cease and merge and be extinguished in the fee simple. [*Acknowledgment*,

That mortgage money is still due, and is to be paid off out of purchase-money.

(*z*) If the debt is not to be fully discharged, insert after the words "the said sum of £——," the words "with current interest for the same," and omit the statement that all interest has been paid.

(*a*) Or, if the case be so, "towards discharge of the principal money and interest owing to him as aforesaid." Sometimes the mortgagee releases the property sold without payment, in which case the following recital should be substituted for that in the text :—

"AND WHEREAS the said mortgage debt is still owing to the mortgagee, but he, being satisfied that the other hereditaments comprised in the mortgage are a sufficient security for the same, has consented to the whole of the said purchase-money being paid to the vendor, and has agreed at the request of the vendor to join in these presents in manner hereinafter appearing."

The purchase-money will be paid to the vendor "with the consent of the mortgagee," and the mortgagee will convey "at the request" instead of "by the direction" of the vendor.

When the mortgage debt is not fully paid off and the mortgagee retains possession of the documents, the vendor should, it is thought, give a covenant for production, whether the mortgagee gives the statutory acknowledgment or not, but, in practice, the mortgagee's acknowledgment is often accepted as sufficient : see ACKNOWLEDGMENTS, General Remarks.

PRECEDENT VIII.

BY MORTGAGOR AND MORTGAGEE.

&c., by vendor as to documents, p. 23. *Certificate if not over* £500, p. 149]. IN WITNESS, &c.

FIRST SCHEDULE—*Description of hereditaments.*

SECOND SCHEDULE—*Documents.*

IX.

PRECEDENT IX.

BY CHARGEE BY WAY OF LEGAL MORTGAGE.

CONVEYANCE *of* FREEHOLDS *by* CHARGEE BY WAY OF LEGAL MORTGAGE *under his statutory* POWER OF SALE *the* MORTGAGOR NOT *being a* PARTY (*b*).

THIS CONVEYANCE made, &c., BETWEEN [*chargee*] of, &c. (herein called "the vendor") of the one part and [*purchaser*] of, &c. (herein called "the purchaser") of the other part. WHEREAS by a Legal Charge (herein called "the legal charge" (*c*)), dated, &c., and made between [*owner*] of the one part and the vendor of the other part, the said [*owner*], being then seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described, charged the said hereditaments by way of legal mortgage with the payment to the vendor of the money thereby secured. AND WHEREAS money is still due under the legal charge and the vendor in exercise of the statutory power of sale vested in him by the Law of Property Act, 1925, has agreed to sell the said hereditaments to the purchaser for an estate in fee simple in possession free from incumbrances at the price of £——. NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £——, paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge) the vendor in exercise of the said statutory power and of all other powers and AS MORTGAGEE Doth hereby convey unto the purchaser [*parcels as in legal charge*], TO HOLD unto the purchaser in fee simple DISCHARGED from all right of redemption and claims under the legal charge, TO THE INTENT THAT the legal charge may be extinguished as respects the land hereby conveyed (*d*). IN WITNESS, &c.

(*b*) As to the powers of a chargee by way of legal mortgage, see MORTGAGES, General Remarks, and see note to next Precedent.

(*c*) In the Statutory Forms of such charges (see Fifth Schedule to L. P. Act, 1925) the expression used is "legal charge," and for sake of uniformity the same expression is used here; but some other term might have been found which would better express the nature of the security, as there are other charges (*e.g.*, tithe rentcharge, &c.) which are legal charges: see MORTGAGES, General Remarks.

X.

Conveyance *of* Freeholds *by a* Mortgagee *under his statutory* Power of Sale, *the* Mortgagor not *being a* Party (*d*).

Precedent X.

By mortgagee.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. [*mortgagee*] (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS by a Mortgage (herein called "the mortgage"), dated, &c., [*after* 1925], and made between [*mortgagor*], of the one part, and the vendor of the other part, the said [*mortgagor*] demised the hereditaments hereinafter described unto the vendor for a term of 3,000 years from the date thereof, without impeachment of waste, subject to redemption on payment to the vendor of the sum of £—— with interest as therein mentioned. Recital of mortgage.

AND WHEREAS money is still due under the mortgage, and the vendor, in exercise of the statutory power of sale vested in him by the Law of Property Act, 1925, has agreed to sell to the purchaser, at the price of £——, the fee simple in possession, free from incumbrances, of the said hereditaments. —and of contract for sale.

NOW THIS DEED WITNESSETH, that in pursuance of the said agreement and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge) the vendor in exercise of the said statutory power and of all other powers and AS MORTGAGEE Doth hereby convey unto the purchaser [*parcels as in mortgage*], Conveyance.

TO HOLD UNTO the purchaser, in fee simple, DISCHARGED from all right of redemption and claims under the mortgage TO THE INTENT that the term created by the mortgage may cease and merge and be extinguished in the fee simple. To purchaser in fee discharged from mortgage.

[*Certificate if not over* £500, p. 149]. IN WITNESS, &c.

(*d*) As to the powers of a mortgagee or chargee when exercising his statutory power of sale, see L. P. Act, 1925, sect. 104, under which a conveyance need not now be made in "professed" exercise of the power.

As to the effect of this conveyance, see L. P. Act, 1925, sect. 88 (set out under General Remarks in MORTGAGES). The conveyance may, as respects the fee simple, be made in the name of the estate owner in whom it is vested (sect. 88, sub-sect. (1)). This seems to be unnecessary, as by the section the conveyance by the mortgagee or chargee alone operates to vest the fee simple in the purchaser. If, however, this course is preferred, the mortgagor (who may be called "the owner") should be made a party and will convey and confirm, but no words should be added which would imply any covenant by him for title.

XI.

PRECEDENT XI.

BY EXECUTORS OF MORTGAGEE.

CONVEYANCE *of* FREEHOLDS *by the* EXECUTORS *of a* MORTGAGEE *on a* SALE *under their statutory* POWER OF SALE (*e*).

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c., and B., of, &c. [*executors of mortgagee*] (herein called "the vendors"), of the one part, and C., of., &c. (herein called "the purchaser"), of the other part. WHEREAS, by a Mortgage (herein called "the mortgage") dated the —— day of —— [*after* 1925], and made between [*mortgagor*], of the one part, and [*mortgagee*], of the other part, the said [*mortgagor*] demised the hereditaments hereinafter described unto the said [*mortgagee*] for a term of 3,000 years from the date thereof without impeachment of waste subject to redemption on payment of the sum of £—— with interest as therein mentioned. AND WHEREAS the said [*mortgagee*], by his Will dated the —— day of ——, appointed the vendors executors thereof, and died on the —— day of ——, and the said Will was proved by the vendors in the —— Registry, on the —— day of ——. AND WHEREAS money is still due under the mortgage, and the vendors, in exercise of the statutory power of sale vested in them by law, have agreed with the purchaser for the sale to him of the said hereditaments, in fee simple in possession free from incumbrances, at the price of £——. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchaser to the vendors (the receipt whereof the vendors do hereby acknowledge), the vendors, in exercise of the said power and of all other powers, statutory or otherwise, AS MORTGAGEES and as PERSONAL REPRESENTATIVES of the said [*mortgagee*] deceased, Do hereby convey unto the purchaser [*parcels as in mortgage*] TO HOLD unto the purchaser in fee simple, DISCHARGED from all right of redemption and claims under the mortgage TO THE INTENT that the term created by the mortgage shall cease and merge and be extinguished in the fee simple. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

Recital of mortgage;

—of will and death of mortgagee;

—of contract for sale.

Receipt.

Habendum.

SCHEDULE—*Description of hereditaments.*

(*e*) As to the effect of this conveyance, see note to preceding Precedent.

XII.

Conveyance *in* Fee *of an* Equity *of* Redemption (*f*).

Precedent XII.

In fee of an equity of redemption.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS by a Mortgage (herein called "the mortgage") dated, &c. [*after* 1925], and made between the vendor, of the one part, and [*mortgagee*], of the other part, the vendor demised the hereditaments hereinafter described unto the said [*mortgagee*] for a term of 3,000 years from the date thereof without impeachment of waste, subject to a redemption on payment of the sum of £——, with interest as therein mentioned. AND WHEREAS the said sum of £—— is still due upon the security of the mortgage, but all interest thereon has been paid up to the date hereof. AND WHEREAS the vendor has agreed to sell to the purchaser the fee simple in possession of the said hereditaments subject to the mortgage and to the payment of the money thereby secured, but otherwise free from incumbrances, at the price of £—— (*g*). NOW THIS DEED WITNESSETH, that in pursuance of the said agreement and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge).

Recital of mortgage, state of debt, and contract for sale.

1. The vendor, AS BENEFICIAL OWNER, doth hereby convey unto the purchaser [*parcels as in mortgage*] TO HOLD unto the purchaser in fee simple, SUBJECT to the mortgage and to the term thereby created, and to the payment of the principal sum of £—— thereby secured, and all interest to accrue due thereon.

Habendum.

Subject to the mortgage.

2. The purchaser doth hereby covenant with the vendor that the purchaser or persons deriving title under him will pay to the said [*mortgagee*], or persons entitled to the benefit of the security, the said principal sum of £——, and all interest to

Covenant by purchaser to pay mortgage debt and indemnify vendor.

(*f*) As the purchaser takes subject to the mortgage debt, he should ascertain by enquiry of the mortgagee what is the actual state of the debt. The enquiry should be made in writing, and it should be stated that the enquiry is made on behalf of an intending purchaser. In any case, notice of this purchase should be given to the mortgagee. The purchaser will be bound to indemnify the vendor against the mortgage debt (*Waring* v. *Ward* (1802), 7 Ves. 332; see *Mills* v. *United Counties Bank*, [1912] 1 Ch. 231); and therefore no covenant to that effect is necessary, but such a covenant is usual. If the vendor should be sued on his covenant in the mortgage, he will acquire a new right to redeem. See *Kinnaird* v. *Trollope* (1888), 39 Ch. D. 636. But this right, necessarily arising out of the purchaser's default, does not constitute any injury to him.

(*g*) Stamp duty will be payable *ad valorem* on the aggregate amount of the price and the mortgage money (including interest unless paid by the vendor up to date): see Stamp Act, 1891, sect. 57.

PRECEDENT. XII.

IN FEE OF AN EQUITY OF REDEMPTION.

accrue due thereon under the mortgage, and perform and observe all the covenants and conditions therein contained, and will keep the vendor and his personal representatives indemnified against all proceedings, costs, damages, claims, demands, and liability for non-payment of the said principal money and interest or breach of any such covenant or condition. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

SCHEDULE—*Description of hereditaments.*

XIII.

PRECEDENT. XIII.

BY MORTGAGOR TO MORTGAGEE.

CONVEYANCE *of an* EQUITY *of* REDEMPTION *in* FREEHOLDS BY *the* MORTGAGOR TO *the* MORTGAGEE.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (herein called "the vendor"), of the one part, and B., of, &c. [*mortgagee*] (herein called "the purchaser"), of the other part. WHEREAS by a Mortgage (herein called "the mortgage") dated, &c. [*after* 1925], and made between the vendor, of the one part, and the purchaser, of the other part, the vendor demised the hereditaments hereinafter described unto the purchaser for a term of 3,000 years from the date thereof without impeachment of waste, subject to redemption on payment of the sum of £—— [*principal*], with interest as therein mentioned. AND WHEREAS the vendor has agreed to sell to the purchaser the said hereditaments in fee simple in possession free from incumbrances for the sum of £—— [*purchase money*, i.e., *mortgage debt plus extra payment*]. AND WHEREAS the said principal sum of £—— is owing to the purchaser, but all interest thereon has been paid down to the date hereof, and it has been agreed that the said sum of £—— shall be retained by the purchaser out of the said purchase-money, and that he should give such release as hereinafter is contained. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— [*extra payment*] paid by the purchaser to the vendor, and making together with the sum of £—— [*mortgage debt*] retained by the purchaser as aforesaid the total purchase-money of £—— (the receipt of which sum of £—— [*extra payment*] so paid as aforesaid the vendor doth hereby acknowledge), and of the release hereinafter on the part of the purchaser contained.

Recital of mortgage and contract;

—that mortgage money owing, and to be retained out of purchase-money,

—and that release should be given.

Habendum.

1. The vendor, AS BENEFICIAL OWNER, Doth hereby convey unto the purchaser [*parcels as in mortgage*], TO HOLD unto

PRECEDENT XIII.

BY MORTGAGOR TO MORTGAGEE.

the purchaser in fee simple, DISCHARGED from all equity of redemption and claims under the mortgage.

2. The purchaser Doth hereby release the vendor and his personal representatives from the said sum of £—— [*mortgage debt*] and all future interest, and from all claims and demands in respect thereof, or otherwise under the mortgage. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c. (*h*).

Release from mortgage debt.

XIV.

PRECEDENT XIV.

BY PERSON HAVING POWERS OF TENANT FOR LIFE.

CONVEYANCE *of* SETTLED LAND [*and a* RIGHT OF WAY *over adjoining land*] *by person having the* POWERS *of a* TENANT FOR LIFE (*i*).

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the first part, B., of, &c., and C., of, &c. (herein called "the trustees"), of the second part, and D., of, &c. (herein called "the purchaser"), of the third part. WHEREAS at the date of the deed next hereinafter recited the vendor was beneficially entitled in possession to the hereditaments hereinafter described [together with other hereditaments including the land hereinafter described over which a right of way is hereinafter conveyed] for an estate in fee simple in possession free from incumbrances. AND WHEREAS by a Vesting Deed (herein called "the vesting deed" (*k*)) dated, &c., and made between the vendor, of the first part, E. [*intended wife*], of the second part, and the trustees, of the third part, being a deed executed in consideration of a marriage then intended, and shortly afterwards solemnised between the vendor and the said E., the vendor declared that the said hereditaments [and other land] were vested in the vendor in fee simple upon the trusts declared by a Trust Instrument bearing even date with, but intended to be executed immediately after, the vesting deed, and made between the same parties and in the same order as in the vesting deed or upon such other trusts as the same ought from time to time to be held. And the trustees were thereby declared to be the trustees of the settlement for all the purposes of the Settled Land Act, 1925. AND WHEREAS all or some of the trusts

Recital of title of vendor at date of vesting deed;

—of vesting deed;

—that trusts are subsisting;

(*h*) Having regard to sect. 116 of the L. P. Act, 1925, a proviso for keeping the mortgage alive would appear to be ineffectual.

(*i*) As to the sale of settled land, see General Remarks, above, p. 147.

(*k*) As to the nature and effect of vesting deeds, see SETTLEMENTS, General Remarks.

PRECEDENT XIV.

BY PERSON HAVING POWERS OF TENANT FOR LIFE.

declared by the said trust instrument are still subsisting (*l*). AND WHEREAS the vendor, in exercise of the power vested in him by the Settled Land Act, 1925, has agreed to sell to the purchaser the fee simple in possession free from incumbrances of the hereditaments hereinafter described [together with the right of way hereinafter mentioned] for the sum of £——. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement and in consideration of the sum of £—— paid by the purchaser by the direction of the vendor to the trustees as such trustees as aforesaid (the receipt whereof the trustees do hereby acknowledge).

—of agreement for sale.

Parcels of farm;

1. The vendor, in exercise of the power vested in him by the Settled Land Act, 1925, and of all other powers, and AS TRUSTEE (*m*), Doth hereby convey unto the purchaser (*n*) ALL THAT messuage or farmhouse, farm, land, buildings, and hereditaments called —— Farm, situate in the Parish of ——, in the County of ——, particulars whereof are specified in the First Schedule hereto, and which (by way only of identification) are delineated on the plan hereto and thereon coloured —— [*see also* PARCELS] [TOGETHER WITH the right for the purchaser and the owners and occupiers for the time being of the land hereby conveyed, or of any part thereof, and all persons authorised by him or them [in common with the vendor and others having a similar right], with or without horses or other animals, carriages, motor-cars, or other vehicles of any kind, at all times to pass and repass from and to the said messuage, farm, and land, or any part thereof, to and from the high road between the points marked X. and Y. on the said plan over the land thereon delineated lying between the said messuage, farm, and land and the said high road along the strip indicated by dotted lines [*or* coloured ——] on the said plan, and which strip is intended as a road for such purpose, but without obligation on any person to form or repair such strip into or as a road], TO HOLD unto the

—with right of way.

Habendum.

(*l*) See S. L. Act, 1925, sect. 17, as to the duty of the trustees by deed to discharge themselves from the trusts, so far as regards the land, when the trusts have come to an end: see SETTLEMENTS, General Remarks.

(*m*) The effect of the vesting deed is to vest the property in the vendor upon certain trusts which are not disclosed, so that he holds the fee simple in a fiduciary capacity. He should, therefore, it is thought, convey only "as trustee."

(*n*) The parcels here are supposed to be a farm on the estate. If the property comprises or includes the principal mansion-house, pleasure grounds, park and land usually occupied therewith, then, if the settlement is made or comes into operation after 1925, the consent of the trustees or an order of the Court is only required if the settlement expressly so provides (see S. L. Act, 1925, sect. 65). A house usually occupied as a farmhouse, or where the house and lands do not exceed twenty-five acres, is not to be deemed a "principal mansion house" (see sub-sect. (2)).

PRECEDENT XIV.
BY PERSON HAVING POWERS OF TENANT FOR LIFE.

purchaser in fee simple DISCHARGED from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder (*o*).

2. The vendor doth hereby acknowledge the right of the purchaser to production and to delivery of copies of the documents mentioned in the Second Schedule hereto (*p*). [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

FIRST SCHEDULE—*Particulars of farm.*

SECOND SCHEDULE—*Documents to be produced.*

XV.

CONVEYANCE *of* SETTLED LAND [*with* RESERVATION *of* MINERALS] WITHOUT RECITALS (*q*).

PRECEDENT XV.
OF SETTLED LAND WITHOUT RECITALS.

THIS CONVEYANCE, made the —— day of ——, BETWEEN A., of, &c. [*tenant for life*] (herein called "the vendor"), of the first part, B., of, &c., and C., of, &c. (herein called "the trustees"), of the second part, and D., of, &c. (herein called "the purchaser"), of the third part, Supplemental to the deeds specified in the First Schedule hereto, WITNESSETH that in consideration of the sum of £—— paid by the purchaser by the direction of the vendor to the trustees for the purchase of the fee simple in possession free from incumbrances of the hereditaments hereinafter conveyed (the receipt whereof the trustees hereby acknowledge).

1. The vendor, in exercise of the power conferred on him by the Settled Land Act, 1925, and of all other powers, and AS TRUSTEE, Doth hereby convey unto the purchaser ALL THOSE

(*o*) See S. L. Act, 1925, sect. 72. The words "discharged, &c.," merely express the effect of the conveyance under the statutory power. If any part of the property is subject to a lease or other incumbrance which is not overridden by the conveyance, this should be mentioned in the Habendum.

(*p*) If, as it is thought, the vendor is to be treated merely as a fiduciary, he would not give any undertaking for safe custody (see ACKNOWLEDGMENTS (PRODUCTION OF DEEDS), General Remarks), although by virtue of his beneficial interest he is entitled to the custody of the documents.

(*q*) Compare the preceding Precedent. As to the power to reserve minerals on the sale of settled land, see S. L. Act, 1925, sect. 50. As will be seen from the Schedule, the settlement was made before 1926, and the vendor is selling under the vesting deed executed after 1925, and in exercise of the power conferred by the S. L. Act, 1925. The material facts are supposed to appear in the documents in the Schedule, to which this conveyance is supplemental. Substantive recitals may, of course, if desired, be inserted in the conveyance. Compare preceding Precedent, where settlement made after 1925.

PRECEDENT XV.

OF SETTLED LAND WITHOUT RECITALS.

hereditaments described in the Second Schedule hereto. [EXCEPT and reserving unto the vendor in fee simple, all mines and minerals within and under the land hereinbefore conveyed, and full power at all times, to enter upon and occupy the surface of the same land, or any part thereof, and to search for, sink to, work, win, get to bank, lay up, store, convert, burn, dress, and carry away the said minerals, and any mines, minerals, and substances in, under, or upon any other land without leaving any vertical or lateral support for the surface of the said land hereinbefore conveyed, or any building now standing, or which may hereafter be erected thereon, and for the purposes aforesaid, or any of them, to sink pits, erect buildings, furnaces, ovens, machinery, and apparatus, and to make, and use rail and other ways and roads, pit hills and spoil banks, and to dig, and get brick-earth and sand, and to make bricks to be used in building on the said land, or in the mines under the same, or in mines connected therewith, but not for sale off the land, and to make watercourses, ponds, and reservoirs, and collect water, and to do upon, over, and under the surface of the said land, all things which may be found necessary, expedient, or convenient for the purposes aforesaid, or any of them, making and paying from time to time compensation to the purchaser and his successors in title, and his or their lessees and tenants, for damage done in exercising the powers hereinbefore reserved, the amount of any such compensation to be ascertained in accordance with the provisions in that behalf contained in the Arbitration Act, 1889, or any amending Act], TO HOLD unto the purchaser in fee simple DISCHARGED [*&c., as in preceding Precedent*].

Reservation of mines (*r*).

With powers of working.

To sink pits, erect buildings, and make and use railroads, and make bricks.

Making compensation.

Habendum.

2. The vendor Doth hereby acknowledge the right of the purchaser to production and to delivery of copies of the deeds specified in the First Schedule hereto. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

Acknowledgment as to deeds in schedule.

(*r*) The following form provides for underground workings only :—

"EXCEPT and reserving unto the vendor and his successors in title in fee simple all mines and minerals under the said land, and the right to work, get, and carry away the same, but only by underground operations, and so that the surface of the land and any building now erected, or which may hereafter be erected, thereon be not entered upon, broken, injured, disturbed, or endangered, and that compensation be made by the vendor and his successors in title, for all damage or injury that may actually be done to the surface of the said lands, or to any building now, or hereafter, to be erected thereon, by subsidence or otherwise."

Exception of mines, with powers of working by underground operations only.

FIRST SCHEDULE (*t*).

PART I.

A SETTLEMENT, dated, &c. [*before* 1926], and made BETWEEN A. (the elder), of the first part, the vendor, of the second part, and P. Q. and R. S., of the third part, and being a settlement of divers manors and other hereditaments in the County of ——, therein described, and which hereditaments included the hereditaments described in the Second Schedule hereto.

PART II.

AN APPOINTMENT, dated, &c. [*before* 1926], and made BETWEEN the vendor, of the first part, the said P. Q., of the second part, and the trustees, of the third part, and being an appointment of the trustees to be trustees of the above-mentioned settlement for all the purposes of the Settled Land Act, 1882, in the place of the said P. Q. and R. S.

PART III.

A VESTING DEED, dated, &c. [*after* 1925], and made BETWEEN the trustees, of the one part, and the vendor, of the other part, whereby the hereditaments mentioned in the First and Second Schedules thereto (including the hereditaments described in the Second Schedule hereto), and all other (if any) the premises capable of being thereby vested and then by any means subject to the limitations of the above-mentioned settlement were vested in the vendor as to the freeholds in fee simple and as to the leaseholds for the residue of the terms of years for which the same were respectively held upon the trusts and subject to the powers and provisions upon and subject to which under the above-mentioned settlement or otherwise the same ought from time to time to be held, and it was declared that the trustees were the trustees thereof for all the purposes of the Settled Land Act, 1925. [*Add other special clauses, if any.*]

SECOND SCHEDULE.

Description of hereditaments hereby conveyed.

(*t*) The settlement mentioned in the First Part of this Schedule is assumed to be a family settlement by A. and his father A. (the elder), the death of the latter and of R. S., one of the trustees appointed by the settlement, being also assumed to be recited in the appointment mentioned in the Second Part.

As to the vesting deed in Part III., compare the Statutory Form, S. L. Act, 1925, First Schedule, Form No. 1 (set out under SETTLEMENTS).

XVI.

Precedent XVI.

UNDER TRUST FOR SALE IN A WILL TO TRUSTEES OF PERSONALTY SETTLEMENT.

Conveyance *of* Freeholds *under a* Trust for Sale *in a* Will *to* Trustees *of a* Personalty Settlement.

THIS CONVEYANCE, made the —— day of ——, 19—, BETWEEN A. B., of, &c., and C. D., of, &c. [*trustees for sale under the will*] (herein collectively called "the vendors"), of the first part, E. F., of, &c., widow [*person consenting to the sale* (*u*)] (herein called "the widow"), of the second part, G. H., of, &c., and H. H., his wife [*parties in personalty settlement*] (herein called "the husband and wife"), of the third part, and I. K., of, &c., and L. M., of, &c. [*trustees of personalty settlement*] (herein called "the purchasers"), of the fourth part. WHEREAS R. F., late of ——, by his Will dated the —— day of —— (among other things) devised all his real estate unto the said A. B. [*one of the vendors*] and N. O. upon trust, with the consent in writing of his wife, the widow, during her life to sell the same and apply the money to arise by such sale, for the purposes and in the manner therein mentioned; And the testator thereby appointed the said A. B. and N. O. executors of his Will (*x*). AND WHEREAS the testator, by a Codicil, dated, &c., appointed the said C. D. [*the other vendor*] to be a trustee and executor of his Will instead of the said N. O., who had died, and jointly with the said A. B., and devised to the vendors all the hereditaments which he had by his Will devised to the said A. B. and N. O. upon the trusts and with and subject to the powers and provisions therein contained. AND WHEREAS the testator died on the —— day of ——, and his said Will and Codicil [together with another Codicil immaterial to the purposes of these presents] were proved by the vendors in the —— Registry on the —— day of ——. AND WHEREAS the testator was at his death seised of (among other hereditaments) the hereditaments described in the First Schedule hereto for an estate in fee simple in possession free from incumbrances [except such as have been paid off and discharged as hereinafter recited. AND WHEREAS the vendors paid off and discharged out of money in their hands as executors and trustees, and applicable to the purpose, all the incumbrances [*or*, the only incumbrance] existing at the testator's death on the heredita-

Recital of will;

—codicil substituting a trustee for one deceased;

—the death of testator;

—probate of his will;

—his seisin of hereditaments to be sold;

—payment off by trustee of mortgages existing at testator's death;

(*u*) If the trust were exercisable without any consent, it would be necessary to omit the consenting party and all references to her.

(*x*) If the testator died after 1925, a recital of the assent of the executors should be introduced, see ASSENTS, Precedents II. and VII.

ments devised by the said Will [*or*, on the said hereditaments hereinafter conveyed], and procured the same hereditaments to be duly conveyed to themselves in fee simple in possession, discharged from the said incumbrances [*or* incumbrance]. AND WHEREAS the vendors, with the consent of the widow, and in execution of the aforesaid trust for sale, have agreed to sell to the purchasers the fee simple in possession of the hereditaments hereinafter described free from incumbrances at the price of £——. AND WHEREAS the purchasers are the present trustees of a Settlement dated, &c., and made between [*parties*], and in exercise of the power thereby conferred they have agreed to purchase the said hereditaments with the consent of the husband and wife out of money in their hands as such trustees, and applicable with such consent to the purchase of hereditaments to be conveyed upon the trusts and in manner hereinafter appearing. AND WHEREAS the documents specified in the Second Schedule hereto relate to the title as well of the hereditaments hereinafter conveyed as of the other hereditaments, and are in the possession of the vendors. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchasers to the vendors, and with the consent (hereby testified) of the husband and wife (the receipt of which sum of £—— the vendors hereby acknowledge).

—agreement for sale to trustees of settlement;

—title of trustees of the settlement;

—as to deeds.

1. The vendors, AS TRUSTEES, Do hereby convey unto the purchasers [*parcels by reference to First Schedule, see* PARCELS], TO HOLD unto the purchasers in fee simple upon the trusts and subject to the powers and provisions upon, and subject to which the same ought to be held under the said settlement, by reason of the same having been so purchased as aforesaid.

Conveyance to trustees.

Upon trusts of personalty settlement.

2. The vendors do hereby acknowledge the right of the purchasers to production and to delivery of copies of the documents specified in the said Second Schedule hereto. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

Acknowledgment for production.

FIRST SCHEDULE—*Description of hereditaments.*

SECOND SCHEDULE—*Documents retained by the vendors.*

XVII.

PRECEDENT XVII.

BY PERSONAL REPRESENTATIVES UNDER THEIR PARAMOUNT POWERS.

CONVEYANCE *of* FREEHOLDS *by the* PERSONAL REPRESENTATIVES *of a* DECEASED PERSON.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c., and B., of, &c. [*personal representatives*] (herein called "the vendors"), of the one part, and C., of, &c. (herein called "the purchaser"), of the other part. WHEREAS D., late of ——, by his Will, dated the —— day of ——, appointed the vendors to be the executors thereof and died on the —— day of ——, and his said Will was proved by the vendors in the —— Registry, on the —— day of ——. AND WHEREAS the said D. was at his death seised of [among other hereditaments] the hereditaments hereinafter described for an estate in fee simple in possession free from incumbrances. AND WHEREAS the vendors hereby declare that they have not given or made any assent or conveyance in respect of or affecting the legal estate of the said hereditaments (*y*). AND WHEREAS the vendors have agreed with the purchaser for the sale to him of the said hereditaments in fee simple in possession free from incumbrances for the sum of £——. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchaser to the vendors (the receipt whereof the vendors do hereby acknowledge), the vendors, AS PERSONAL REPRESENTATIVES of the said D., deceased, in exercise of their statutory powers as such personal representatives and of all other powers, and according to their estate and interest, Do hereby convey unto the purchaser [*parcels, see* PARCELS], TO HOLD unto the purchaser in fee simple. [AND the vendors do hereby acknowledge the right of the purchaser to production and to delivery of copies of the documents specified in the [Second] Schedule hereto.] [*Certificate if not over* £500, p. 149.] IN WITNESS, &c. (*z*).

Recitals;

—of will, death and probate;

—of seisin;

—of no assent;

—of agreement for sale.

Conveyance.

Acknowledgment as to documents.

[FIRST] SCHEDULE—*Description of hereditaments.*

[SECOND SCHEDULE—*Documents to be produced.*]

(*y*) See A. E. Act, 1925, sect. 36, sub-sects. (6) to (8), set out under ASSENTS, General Remarks.

(*z*) The Land Transfer Act, 1897, Part I., conferred on the executors or administrators of a person dying after 1897 the same powers of dealing with his real estate as with his chattels real. The provisions of this Part of the Act (now repealed) are replaced by Part I. of the A. E. Act, 1925, sects. 1 to 3. Where there are two or more executors, all who have proved must concur in a conveyance of real estate (except by order of Court) (see sect. 2, sub-sect. (2), sect. 3, sub-sect. (1)). It was sometimes difficult to say when the powers of an executor as such to dispose by way of sale or mortgage actually ceased,

XVIII.

CONVEYANCE *on sale of* FREEHOLDS *by a* DEVISEE *with the assent of the* EXECUTORS.

PRECEDENT XVIII. — BY DEVISEE WITH ASSENT OF EXECUTORS.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the first part, B., of, &c., and C., of, &c. (herein called "the executors"), of the second part, and D., of, &c. (herein called "the purchaser"), of the third part. WHEREAS the late E., who was at her death seised in unincumbered fee simple in possession of the hereditaments hereinafter described, by her Will, dated the —— day of ——, 19—, appointed the executors to be the executors and trustees thereof, and devised all her real estate to the vendor. AND WHEREAS the said E. died on the —— day of ——, 19—, and her Will was proved on the —— day of —— by the executors in the —— Registry. AND WHEREAS the vendor has agreed with the purchaser for the sale to him of the said hereditaments for an estate in fee simple in possession free from incumbrances at the price of £——. AND WHEREAS the executors have assented to the vesting in the vendor of the legal estate in fee simple in the said hereditaments, and for the purpose of testifying such assent have agreed to join in these presents in manner hereinafter appearing (*a*). NOW THIS DEED WITNESSETH, that in pursuance of the said agreement and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge), the vendor, AS BENEFICIAL OWNER, Doth hereby convey, and the executors, AS PERSONAL REPRESENTATIVES of the said E., deceased, Do hereby by the direction of the vendor in pursuance of such assent convey and confirm unto the purchaser ALL THAT, &c. [*see* PARCELS], TO HOLD unto the purchaser in fee simple. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

Recitals of seisin of testator;

—of will containing devise;

—of death and probate;

—of agreement for sale;

—of assent of executors.

Conveyance.

---

or when the property had become vested in him merely as trustee or in the beneficiaries by virtue of an implied assent (see *Attenborough* v. *Solomon*, [1913] A. C. 76; *Re Claremont*, [1923] 2 K. B. 718; *Wise* v. *Whitburn*, [1924] 1 Ch. 460). In future this difficulty will be lessened, as an assent to the vesting of a legal estate must now be in writing (A. E. Act, 1925, sect. 36, sub-sect. (4), set out under ASSENTS, General Remarks). The trusteeship test is similarly applicable to an administrator (see *Re Ponder*, [1921] 2 Ch. 59).

(*a*) It is thought that this recital and the words in the operative part are sufficient compliance with sect. 36, sub-sect. (4), of the A. E. Act, 1925 (set out under ASSENTS, General Remarks).

XIX.

PRECEDENT XIX.

UNDER ORDER OF COURT.

CONVEYANCE *of* FREEHOLDS *sold under an* ORDER *of the* COURT *in an* ADMINISTRATION ACTION.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c., and B., of, &c. [*trustees for sale*] (herein called "the vendors"), of the one part, and C., of, &c. (herein called "the purchaser"), of the other part. WHEREAS D., late of ——, deceased, who was at his death seised of the hereditaments hereinafter described for an estate in fee simple in possession free from incumbrances, by his Will dated, &c. [after giving certain specific and pecuniary legacies], devised and bequeathed all his real and personal estate [not thereby otherwise disposed of] unto the vendors, upon trust to sell, call in, and convert the same, and out of the net proceeds to pay his funeral and testamentary expenses and debts [and the pecuniary legacies bequeathed thereby or by any Codicil thereto], and to invest the residue of the said net proceeds as therein mentioned and to stand possessed of such residue and the investments thereof and the income of the same upon trusts thereby declared for the benefit of his daughter E. and her husband (if any) and issue, and otherwise as therein expressed, and appointed the vendors executors of his said will. AND WHEREAS the said testator died on the —— day of ——, 19—, and his said Will was on the —— day of ——, 19—, proved by the vendors in the —— Registry. AND WHEREAS by an Order of the Chancery Division of the High Court of Justice [of the County Court of ——] made the —— day of ——, 19—, by the Hon. Mr. Justice —— [His Honour Judge ——], in an action entitled *In the Matter of the Estate of D., deceased; E. v. A.*, 19—, D., No.—, it was ordered that the testator's real estate (which real estate as appears by the Master's Certificate therein referred to comprised the said hereditaments and also other hereditaments and was unincumbered) should be sold under the direction of the Court (*b*), and that the purchase-money to arise from the sale thereof should be paid into Court to the credit of the said action, to an account entitled "Proceeds of sale of real estate." AND WHEREAS pursuant to the said Order the said testator's real estate was on the —— day of ——, 19—, put up for sale by auction in several lots, the said hereditaments constituting Lot ——. AND WHEREAS at the said sale the purchaser was the highest bidder for the said Lot —— at the sum

Recital of testator's seisin;

—of his will;

—of his death;

—and probate;

—of order of Court for sale;

—of the auction;

—of the sale to the purchaser and payment of deposit;

(*b*) Or, if so ordered, "out of Court," and mention who is to have the conduct of the sale. See *Cumberland, &c. Co.* v. *Maryport, &c. Co.*, [1892] 1 Ch. 92.

of £1,000, and he thereupon paid to X., the person appointed by the said Judge to receive the same (*c*), the sum of £100 as a deposit pursuant to one of the conditions of the said sale, which last-mentioned sum, together with other deposits received at the said sale, has since been paid by the said X. (*d*) into Court to the credit of the account aforesaid. AND WHEREAS the purchaser (who by the Master's Certificate filed on the —— day of —— was declared to be the purchaser (*e*)), on the —— day of ——, 19—, paid the sum of £900, the balance of his said purchase-money [together with a sum of £50, the amount of a valuation of timber on the said hereditaments made in accordance with one of the conditions of the said sale] and the sum of £15 for interest thereon [respectively] at the rate of —— per cent. per annum from the —— day of ——, 19—, to the —— day of ——, 19—, making together an aggregate sum of £915 [£965], into Court to the credit of the account aforesaid (*f*). NOW THIS DEED WITNESSETH that for effecting the said sale in obedience to the said order, and in consideration of the said sums of £100 and £915 [£965], making together £1,015 [£1,065] paid by the purchaser as hereinbefore recited and of the premises, the vendors AS TRUSTEES (*g*) Do hereby convey unto the purchaser [*see* PARCELS], TO HOLD unto the purchaser in fee simple. IN WITNESS, &c.

—of payment of balance of purchase-money.

Conveyance.

SCHEDULE—*Description of hereditaments.*

(*c*) If the sale be out of Court, say "to X., the auctioneer."

(*d*) Or the person having conduct of the sale.

(*e*) The certificate is binding, unless discharged or varied before the expiration of eight days after it has been filed: see R. S. C., Ord. 55, r. 70. In *Re Clayton*, [1920] 1 Ch. 257, adopting the decision in *Re Longvale, &c. Works*, [1917] 1 I. R. 321, where a mistake had been made as to the reserve price, the Court refused to certify the highest bidder as the purchaser, notwithstanding sect. 7 of the Sale of Land by Auction Act, 1867.

(*f*) The recitals should follow the actual terms of the order in each case. As to the practice generally on sales by the Court, see R. S. C., Ord. 51, and notes in the Annual Practice: Wms. V. & P. (1922), vol. 1, 448-452; L. P. Act, 1925, sect. 204.

(*g*) A similar covenant to that implied by conveying "as trustees" would be implied if they conveyed "under the said order of the Court": see Conv. Act, 1881, sect. 7 (F.), set out under General Remarks above. An acknowledgment for production of deeds should be added if required. As to the stamp duty, see the Finance (1909-10) Act, 1910, sect. 73.

XX.

PRECEDENT XX.

BY HUSBAND TO WIFE.

CONVEYANCE *of* FREEHOLDS *by a* HUSBAND *to his* WIFE *on a purchase out of her separate property* (*h*).

THIS CONVEYANCE, made, &c., BETWEEN A. B., of, &c. (herein called "the vendor"), of the one part, and C. B., his wife (herein called "the purchaser"), of the other part, WITNESSETH, that in consideration of the sum of £—— paid by the purchaser out of money belonging to her for her separate use to the vendor (the receipt whereof the vendor doth hereby acknowledge), the vendor, AS BENEFICIAL OWNER, Doth hereby convey unto the purchaser [*see* PARCELS], TO HOLD unto the purchaser in fee simple (*i*). [*Acknowledgment, &c., as to documents if required*, p. 23. *Certificate if not over* £500, p. 149.] IN WITNESS, &c.

SCHEDULE—*Description of hereditaments.*

XXI.

PRECEDENT XXI.

OF AN EQUITABLE REMAINDER IN FEE.

CONVEYANCE *of an* EQUITABLE REMAINDER *in* FEE SIMPLE (*k*).

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS by virtue of the Will dated, &c., of C., who died, &c. [*before* 1926], and proved on the —— day of —— by X. and Y., the executors therein named (herein called "the trustees"), in the —— Registry, and of a Disentailing Assurance dated, &c. [*before* 1926], and made between D. [*father of* A. *and the tenant for life*], of the first part, the vendor, of the second part,

Recital of title of vendor;

(*h*) By the Married Women's Property Act, 1882, all property acquired after 1882 by a woman married previously to 1883 or belonging to or acquired by a woman married after 1882 belongs to such woman for her separate use (sects. 2 and 5). She may also acquire, hold and dispose of any property as her separate property as if she were a *feme sole*, without the intervention of any trustee (sect. 1, sub-sect. (1)). As to her contracts, &c., see also Married Women's Property Act, 1893.

(*i*) The above Precedent is not only applicable to a conveyance by a stranger to a married woman, but may also be adapted to a conveyance by way of gift, reciting that the donor desires to convey the same by way of gift; and, in the operative part, stating the consideration to be his love and affection for the donee. There is no material difference between a purchase and a gift as between husband and wife: *French* v. *Gething*, [1922] 1 K. B. 236.

(*k*) The settlement here is assumed to be one subsisting on the 1st January, 1926, and to fall within the transitional provisions of Para. 1 of the Second Schedule to the S. L. Act, 1925. It is assumed that before the disentailing assurance the executors had assented to the devise, which under the previous law they could do without writing. This Precedent can be adapted to settlements created after 1925 by appropriate alteration of the recitals.

and Z. [*grantee to uses*], of the third part, and duly enrolled (*l*), and of the Law of Property Act, 1925, the vendor became, on the 1st day of January, 1926, and now is, entitled to the hereditaments hereinafter described for an equitable interest in fee simple in remainder expectant on the death of the said D. free from incumbrances. AND WHEREAS by a Vesting Deed (*m*) dated, &c., and made between the trustees, of the one part, and the said D., of the other part, the trustees declared that the said hereditaments were vested in the said D. in fee simple upon the trusts of the said Will and Disentailing Assurance. AND WHEREAS the vendor has agreed to sell to the purchaser his equitable interest in fee simple in remainder as aforesaid free from incumbrances at the price of £——. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge).

—of vesting deed;

—of agreement for sale.

1. The vendor, AS BENEFICIAL OWNER, Doth hereby convey unto the purchaser ALL THAT his equitable interests in fee simple in remainder in [*see* PARCELS], TO HOLD unto the purchaser in fee simple, Subject to the life interest therein of the said D.

Conveyance of remainder.

2. The vendor doth hereby covenant with the purchaser that the vendor or his personal representatives will, when and so soon as the same shall become payable, pay or otherwise discharge or satisfy all the estate and succession duties and other duties (if any) which shall upon the death of the said D. be payable in respect of the hereditaments hereby conveyed or of the succession conferred on the vendor in the same, AND will at all times keep the purchaser and persons accountable for the same and the hereditaments hereby conveyed indemnified against all actions, proceedings, costs, damages, claims, and demands which may be incurred by reason of the non-payment thereof or otherwise in relation thereon. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c. (*o*).

Covenant by vendor to pay death duties and for indemnity (*n*).

SCHEDULE—*Description of hereditaments.*

(*l*) Enrolment is not required where the disentail was effected after 1925: see L. P. Act, 1925, sect. 133.

(*m*) This recital of the vesting deed is perhaps not essential, but shows in whom the legal fee is vested, and becomes a link in the legal title when the equitable remainder falls into possession (see S. L. Act, 1925, sect. 13).

(*n*) It is often arranged that the vendor should enter into this covenant or that the duties should be commuted. Where, however, the purchaser takes subject to the duties, add at the end of the first clause after "the said D." the words "and to all duties payable on his death in respect thereof." See also L. P. Act, 1925, sects. 16—18.

(*o*) Notice of the deed should be given to the trustees of the settlement.

XXII.

PRECEDENT XXII.

OF A LIFE INTEREST IN FREEHOLDS.

CONVEYANCE *of a* LIFE INTEREST *in* FREEHOLDS.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the other part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS by a Settlement dated, &c. [*before* 1926], and made between [*parties*] (being a settlement made in consideration of the marriage shortly afterwards solemnized between the vendor and ——), the hereditaments hereinafter described stood limited to the use of the vendor and his assigns, during his life, without impeachment of waste, with remainders over. AND WHEREAS by a Vesting Deed dated, &c. [*after* 1925], and made between the said [*the settlement trustees*], of the one part, and the vendor, of the other part, the said hereditaments were vested in the vendor in fee simple upon trust as therein mentioned, and the vendor is now entitled to an equitable life interest in the said hereditaments free from incumbrances. AND WHEREAS the vendor has agreed to sell to the purchaser his said equitable life interest at the price of £——. NOW THIS DEED WITNESSETH, that in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge), the vendor, AS BENEFICIAL OWNER, doth hereby convey unto the purchaser ALL THAT his equitable life interest in [*see* PARCELS], TO HOLD unto the purchaser absolutely during the life of the vendor. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c. (*p*).

Recital of settlement creating the estate for life.

Recital of vesting deed.

Contract for sale.

Conveyance to purchaser.

SCHEDULE—*Description of hereditaments.*

XXIII.

PRECEDENT XXIII.

OF A CONTINGENT REVERSIONARY INTEREST IN FREEHOLDS.

CONVEYANCE *of a* CONTINGENT REVERSIONARY INTEREST *in* FREEHOLDS.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS under the Will dated, &c., of C. [*father of vendor*], deceased, who died, &c. [*before* 1926], and proved on the —— day of ——, in the —— Registry, by X. and Y., the executors therein named, who were thereby appointed the trustees of the settlement created by the Will for the purposes of the Settled

Recital of title of vendor;

(*p*) Notice of the deed should be given to the trustees of the settlement.

PRECEDENT XXIII.

OF A CONTINGENT REVERSIONARY INTEREST IN FREEHOLDS.

Land Acts, 1882 to 1890, and of subsequent events, the vendor, as one of the children of D., his mother, was, on the 1st day of January, 1926, presumptively entitled in remainder in fee simple expectant on the death of the said D., and in the event of his surviving her to a —— share in the freehold hereditaments hereinafter described, and on the death of any one or more or all of his brothers and sisters in the lifetime of the said D. will become entitled to a further share or shares or to the entirety of the said hereditaments. AND WHEREAS by a Vesting Deed dated, &c., and made between the said X. and Y., of the one part, and the said D., of the other part, the said hereditaments were vested in the said D. in fee simple upon the trusts of the said Will, and the vendor is now entitled in equity to a contingent reversionary interest in the said hereditaments as aforesaid. AND WHEREAS the vendor has agreed to sell to the purchaser his said contingent reversionary interest free from incumbrances at the price of £——. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge), the vendor, AS BENEFICIAL OWNER, Doth hereby convey unto the purchaser ALL THAT his contingent reversionary interest in the —— share, and in every other share or shares or in the entirety to which the vendor is, or in the event of his surviving the said D. will be, entitled in ALL [*see* PARCELS], TO HOLD unto the purchaser absolutely [TO THE INTENT that (a) if the vendor shall survive the said D. and become entitled in possession to the entirety of the said hereditaments the purchaser shall hold the entirety in fee simple, but (b) if the vendor shall survive the said D., and become entitled in possession to an undivided share or shares in the said hereditaments, the purchaser shall be entitled absolutely to a corresponding share or shares in the proceeds of sale of the said hereditaments and in the net rents and profits until sale in accordance with the statutory provisions applicable thereto which are then in force (*q*)]. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c. (*r*).

—of vesting deed;

—of contract for sale.

Conveyance.

Habendum.

SCHEDULE—*Description of hereditaments.*

(*q*) The words in brackets may usefully be inserted to explain the nature of the interest which the purchaser takes.

(*r*) During the life of the tenant for life the land is settled land, and remains so settled until discharged by a deed of discharge of the settlement trustees (see S. L. Act, 1925, sect. 17). On the death of the tenant for life, if the vendor has survived and become entitled to an undivided share, the personal representatives of the tenant for life (subject to their rights and powers for the purpose of administration) should convey the land to the settlement trustees (or assent to the land vesting in them) as joint tenants

XXIV.

PRECEDENT XXIV. — OF AN ADVOWSON.

CONVEYANCE *of an* ADVOWSON (*s*).

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part.

Recital of seisin. WHEREAS the vendor is seised in unincumbered fee simple of the advowson or right of patronage of the benefice hereinafter described. AND WHEREAS more than twelve calendar months have elapsed since the last institution or admission to the said benefice. AND WHEREAS the vendor has agreed to sell the said advowson to the purchaser at the price of £——. Now THIS DEED WITNESSETH, that in pursuance of the said agreement and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge), the vendor, AS BENEFICIAL OWNER, Doth hereby convey unto the purchaser ALL THAT the advowson and perpetual right of presentation of and to the Rectory or Parish Church of ——, in the County of ——, TO HOLD unto the purchaser in fee simple. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

Grant.

Parcels.

---

upon the "statutory trusts" (*i.e.*, trust for sale, &c.), and, in the meanwhile, the personal representatives will hold the land upon the statutory trusts (S. L. Act, 1925, sect. 36). If, however, the vendor survived the tenant for life and became entitled to the entirety of the land, and no deed of discharge had been executed, the personal representatives would vest the land in the trustees of the settlement or, by their direction, in the purchaser (see S. L. Act, 1925, sect. 7).

(*s*) The law as to conveyances on sale of advowsons is now regulated by the Benefices Act, 1898, and Rules thereunder. By sect. 1 of this Act a "transfer" (defined in sub-sect. (6)) of a right of patronage of a "benefice" (defined in sect. 13) is not valid unless (a) it is registered in the registry of the diocese within one month from its date or such extended time as the bishop may allow; and (b) it transfers the whole interest of the transferor, except as thereinafter provided (see sub-sect. (6)) and more than twelve months have elapsed since the last institution or admission to the benefice.

The expression "transfer" in sect. 1 includes any conveyance or assurance passing or creating any legal or equitable interest *inter vivos*, and any agreement for any such conveyance or assurance, but does not include (a) a transmission on marriage, death, or bankruptcy or otherwise by operation of law; nor (b) a transfer on the appointment of a new trustee where no beneficial interest passes (sect. 1, sub-sect. (6)). Nothing in sect. 1 prevents the reservation or limitation in a family settlement of a life interest to the settlor, or in a mortgage the reservation of a right of redemption (sect. 1, sub-sect. (7)).

No right of patronage can now be offered for sale by auction except where an advowson is to be sold in conjunction with any manor or with an estate in land of at least 100 acres situate in the parish in which the benefice is situate (or in an adjoining parish) and belonging to the same owner as the advowson (sect. 1, sub-sect. (2)).

The L. P. Act, 1925, does not affect the special restrictions imposed on dealings with advowsons by the Benefices Act, 1898, or any other statute or measure (sect. 201, sub-sect. (2)).

As to the previous law affecting sales of advowsons, see Dav. Prec. Conv., vol. ii., 4th ed., Pt. I., pp. 30 to 41, 356 to 361.

XXV.

Conveyance *of a* Manufactory *to* Partners *as* Joint Tenants *on* Trust for Sale (*t*).

Precedent XXV.

To partners as joint tenants on trust for sale.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c., and C., of, &c. (herein called "the purchasers"), of the other part, WITNESSETH, that in consideration of the sum of £—— paid to the vendor by the purchasers (the receipt whereof the vendor doth hereby acknowledge).

Conveyance to purchasers as joint tenants of mill and factory.

1. The vendor, AS BENEFICIAL OWNER, Doth hereby convey unto the purchasers, ALL THAT mill and factory situate in —— Street, in the Borough of ——, commonly called —— Mill, with the boilers, furnaces, engines, gearing, drums, and shafts thereunto belonging, and all other the fixtures in or about the same mill; and also all those several warehouses, cottages, and pieces of land situate in —— and —— Streets, in —— aforesaid, the ground plan of which mill, land, buildings and hereditaments is delineated on the plan in the margin of these presents, and which hereditaments are described in the Schedule hereto (*u*), TO HOLD unto the purchasers as joint tenants in fee simple.

Purchasers to hold on trust for sale.

2. The purchasers shall HOLD the said hereditaments upon trust to sell the same or any part thereof (with power to postpone the sale), and to stand possessed of the net proceeds of sale (after payment of costs) and of the net rents and profits until sale (after payment of rates, taxes, costs of insurance, and other outgoings) UPON THE TRUSTS and subject to the powers and provisions declared by a Deed [instrument in writing] of even date with, but executed immediately after, these presents (*v*), and

(*t*) The purchasers in this Precedent are supposed to be partners. The form is applicable to other cases where it may be desired to vest the property in joint tenants on trust for sale with absolute legal powers until sale of dealing with the property, the proceeds being held on the trusts of a contemporaneous instrument. As to dispositions on trust for sale, see L. P. Act, 1925, sects. 23—33.

(*u*) The property conveyed is supposed to consist of the mill itself and neighbouring buildings, and land used for the purposes of the mill, and also the fixed motive power and fixed machinery, but avoids any question as to whether the document is a bill of sale within the meaning of the Bills of Sale Acts. Fixtures when assigned with the freehold are not personal chattels within the Act of 1878, sect. 4, but all machinery and effects, other than those expressly excluded by sect. 5 from the definition of "trade machinery," are, whether conveyed with land or not. The fixtures mentioned are, it is believed, within the exceptions, but all other machinery and effects included in the contract should be omitted from the conveyance, and be paid for as goods passing by delivery under a receipted invoice. See BILLS OF SALE, pp. 67, 68.

(*v*) By this instrument the purchasers will (if partners) declare that they hold the premises as partnership property.

PRECEDENT XXV.

TO PARTNERS AS JOINT TENANTS ON TRUST FOR SALE.

until sale may exercise all powers of management, leasing, or mortgage, or otherwise of dealing with the premises as if they were absolute owners in substitution for the powers conferred by the Law of Property Act, 1925 (*x*). [*Acknowledgment, &c., if required, see* ACKNOWLEDGMENTS. *Certificate if not over* £500, p. 149.] IN WITNESS, &c.

SCHEDULE—*Land and buildings.*

XXVI.

PRECEDENT XXVI.

OF A BASE FEE IN FREEHOLDS.

CONVEYANCE *of a* BASE FEE *in* FREEHOLDS *by a* TENANT *in* TAIL *in* REMAINDER.

THIS CONVEYANCE, made, &c., BETWEEN A. B., of, &c. (herein called "the vendor"), of the one part, and C. D., of, &c. (herein called "the purchaser"), of the other part. WHEREAS [*Recitals showing that the hereditaments stand limited to E. B. for life, with remainder to A. B. in tail*]. AND WHEREAS the vendor has agreed to sell to the purchaser the reversion or remainder expectant on the death of the said E. B. therein, of and in the said hereditaments for such estate or interest as the vendor can now, or may hereafter become able to, dispose of, at the price of £——. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge).

Recital of settlement creating the entail.

Agreement for sale.

1. The vendor, AS BENEFICIAL OWNER, Doth hereby convey and dispose of unto the purchaser, ALL [*see* PARCELS], TO HOLD unto the purchaser in fee simple, SUBJECT to the life interest of the said E. B. therein, BUT DISCHARGED from the interest in tail of the vendor therein.

Conveyance to purchaser in fee, subject to life interest, but freed from entailed interest.

2. It is hereby agreed and declared that the covenant on the part of the vendor, implied in these presents, for further assurance of the premises, shall extend to the making and doing after the death of the said E. B., if the vendor shall survive him, and during the remainder of the life of the vendor, of every assurance or thing, which may be necessary, for enlarging the base fee hereby created into and vesting the premises in the purchaser for a legal estate in fee simple.

Agreement as to enlargement of base fee.

3. The vendor doth hereby appoint the purchaser or his personal representatives or assigns the attorney and attorneys

Appointment of purchaser as attorney.

(*x*) See L. P. Act, 1925, sect. 28, which confers the powers of a tenant for life.

of him the vendor, in his name and on his behalf to execute and do every or any such assurance or thing as aforesaid. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c. (*y*).

SCHEDULE—*Description of hereditaments.*

PRECEDENT XXVI.

OF A BASE FEE IN FREEHOLDS.

XXVII.

ASSIGNMENT *in contemplation of* MARRIAGE *of a* LEASEHOLD *Messuage upon* TRUST *for* SALE.

PRECEDENT XXVII.

ASSIGNMENT ON MARRIAGE OF LEASEHOLDS IN TRUST FOR SALE.

THIS ASSIGNMENT, made, &c., BETWEEN A. B., of, &c. [*intended husband*], of the first part, C. D., of, &c. [*intended wife*], of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. [*trustees*] (herein called "the trustees," which expression, where appropriate, includes the trustees or trustee for the time being of these presents), of the third part. WHEREAS by a Lease (herein called "the lease") dated, &c. ——, and made between [*parties*], ALL THAT [*parcels from the lease*] were demised to the said [*original lessee*], from the —— day of —— then last, for the term of —— years, at the yearly rent of £——, and subject to the covenants by the lessee and conditions therein contained. AND WHEREAS the premises comprised in the lease are now vested in the said A. B. for the residue of the said term of —— years (*z*). AND WHEREAS a marriage is intended shortly to be solemnized between the said A. B. (herein called "the husband") and C. D. (herein called "the wife"); NOW THIS DEED WITNESSETH, that, in consideration of the intended marriage :—

Recital of lease;

—of intended marriage.

(*y*) Enrolment is now unnecessary (see L. P. Act, 1925, sect. 133). As the protector of the settlement is not a party to the conveyance, a base fee only passes, determinable on the death of the tenant in tail without leaving issue inheritable under the entail surviving him. See *Re Dickson*, [1921] 2 Ch. 108. As to the covenant for further assurance, see *Bankes* v. *Small* (1887), 36 Ch. D. 716; *Re Gaskell and Walker*, [1906] 2 Ch. 1; *Meeking* v. *Meeking*, [1917] 1 Ch. 77, 87. But now an owner of a base fee in possession, who has power to enlarge the base fee into a fee simple without the concurrence of any other person, may, if of full age, dispose by will of the entire fee simple (L. P. Act, 1925, sect. 176). A married woman, if married after 1882, might have disposed of a base fee without the concurrence of her husband, and, on the death of the protector, might also, without such concurrence, have enlarged it into a fee simple in favour of a purchaser (see *Re Drummond and Davie*, [1891] 1 Ch. 524), and no such concurrence is rendered necessary by the new law (see L. P. Act, 1925, sect. 167, sub-sect. (4)). As to the meaning of "base fee," see sect. 1 of the Fines and Recoveries Act, 1833.

(*z*) If the intended husband was the original lessee, this recital should be omitted.

PRECEDENT XXVII.

ASSIGNMENT ON MARRIAGE OF LEASEHOLDS IN TRUST FOR SALE.

Assignment to trustees.

1. The husband, AS SETTLOR, and with the approbation of the wife, Doth hereby assign unto the trustees, ALL the hereditaments demised by the lease, TO HOLD unto the trustees, for the residue of the said term of —— years, at the rent and subject to the covenants by the lessee and conditions in the lease reserved and contained, and henceforth to be paid, performed, and observed, PROVIDED that the statutory covenant which by virtue of sect. 77 of the Law of Property Act, 1925, is deemed to be included and implied in these presents shall not impose any personal liability on the trustees (*a*), IN TRUST for the husband until the said intended marriage.

In trust for husband till marriage;

—after, in trust for sale.

2. After the solemnization thereof the trustees shall, with the consent in writing of the husband and the wife during their joint lives, and of the survivor during his or her life, and after the death of such survivor at the discretion of the trustees, sell the premises, but with power to postpone such sale. [*Trusts of proceeds of sale, &c., and power to appoint new trustees, as in Precedent V., above.*] IN WITNESS, &c. (*b*).

XXVIII.

ASSIGNMENT *of* LEASEHOLDS *on a* SALE.

PRECEDENT XXVIII.

OF LEASEHOLDS.

Recital of lease;

THIS ASSIGNMENT, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS, by a Lease (herein called "the lease"), dated the —— day of ——, and made between [*parties*], ALL THOSE, &c. [*parcels from the lease*] (*c*), were demised to the vendor [*or*,

---

(*a*) See sect. 77, sub-sects. (1) (c) and (6), and Second Schedule, Part IX., set out under General Remarks above, pp. 139, 141. Trustees are not expected to enter into any covenant to pay the rent and perform the covenants, and this covenant was generally omitted, so that the above proviso is advisible.

(*b*) The deed declaring the trusts is that given under SETTLEMENTS.

Variation where lease not recited.

(*c*) In assigning leaseholds, it is usual and preferable to recite the lease and to set out the parcels in the recital; and in stating the parcels, the exceptions (if any) should either be set out or mentioned, so as to show what was actually demised. If it is desired to avoid reciting the lease, the Precedent may be made available by omitting all the recitals and the reference to the agreement, adding after the statement of the consideration "for the purchase of the hereditaments expressed to be hereby assigned," and substituting for the parcels:—

"ALL THAT messuage No. —, L—— Street, in the Parish of M., in the County of N., the site of which was by a Lease dated the —— day of —— and made between [*parties*] demised to

if vendor not original lessee, "to the said ——"], for the term of —— years from the —— day of ——, at the yearly rent of £——, and subject to the covenants by the lessee and conditions therein contained [including a covenant not to assign the said leasehold hereditaments without the previous written licence of the lessor]. [AND WHEREAS the said hereditaments are now vested in the vendor for the residue of the said term of —— years.] AND WHEREAS the vendor has agreed to sell the said hereditaments to the purchaser, at the price of £——, for the residue of the said term, free from incumbrances. [AND WHEREAS the written licence of the lessor has been duly obtained to the assignment hereby made.] NOW THIS DEED WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge) :—

—of title of vendor;

—of contract for sale;

—of licence to assign;

1. The vendor, AS BENEFICIAL OWNER (*d*), Doth hereby assign unto the purchaser, ALL the hereditaments demised by the lease (*e*), TO HOLD unto the purchaser for the residue of the said term of —— years, at the rent and subject to the covenants by the lessee, and conditions in the lease reserved and contained, and henceforth to be paid performed and observed.

[2. The purchaser doth hereby covenant with the vendor that the purchaser or his successors in title will henceforth pay the rent reserved by the lease, and perform (*f*) and observe the covenants by the lessee and conditions therein contained, and keep the vendor and his estate and effects indemnified

Covenant by purchaser to pay rent, &c., and indemnify vendor.

---

the said [*lessee*], for the term of —— years at the yearly rent of £——, and subject to the covenants by the lessee and conditions therein contained, and which is now vested in the said A. for the residue of the same term,"

or as the case may be. It is sometimes considered that if the character of the property has changed, this is the better mode of assignment. But there is no difficulty in adapting the common form to such circumstances by adding after the parcels in the operative part a reference to the description by which the property has come to be better known.

(*d*) As to the covenants for title implied by these words in an assignment of leaseholds : see L. P. Act, 1925, sect. 76, sub-sect. (1) (A) and (B), and sect. 77, sub-sect. (1) (C), set out under General Remarks, above.

Covenants for title.

(*e*) If houses or other buildings have been erected since the date of the lease, so as to vary the description of the property, they should be mentioned thus :

Description of parcels.

"together with all those —— messuages and buildings which have been built on the said land since the date of the said lease,"

or in some similar way. If the houses are numerous, they may be placed in a schedule, and referred to accordingly : this is particularly convenient when it is desired to show the tenancy and rental.

(*f*) This word has not necessarily an active meaning, and may extend to negative as well as positive covenants : *Harman* v. *Ainslie*, [1904] 1 K. B. 698.

Meaning of "perform" covenants.

PRECEDENT XXVIII. OF LEASEHOLDS.

against all actions, proceedings, expenses, claims, demands, and liability on account of the non-payment of the said rent or any part thereof, or the breach of the said covenants and conditions, or any of them (*g*).] [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

XXIX.

PRECEDENT XXIX. OF LEASEHOLDS BY EXECUTORS.

ASSIGNMENT *of* LEASEHOLDS *by Executors* (*h*) *of the Lessee.* BY INDORSEMENT *on the Lease.*

THIS ASSIGNMENT, made, &c., BETWEEN A., of, &c., and B., of, &c. (herein called "the vendors"), of the one part, and C., of, &c. (herein called "the purchaser"), of the other part, the vendors being the executors of the Will, dated the —— day of ——, of the within-named X. [*lessee*], who died on the —— day of ——, and having proved the said Will on the —— day of —— in the —— Registry, and having given no assent in respect of the leasehold hereditaments hereinafter mentioned (*i*), WITNESSETH, that in consideration of the sum of £——, paid by the purchaser to the vendors for the purchase of the hereditaments demised by the within-written lease (the receipt whereof the vendors hereby acknowledge) :—

Assignment by executors.

1. The vendors, AS PERSONAL REPRESENTATIVES of the said X., deceased, Do hereby assign unto the purchaser ALL the hereditaments demised by the within-written lease, TO HOLD unto the

---

Covenant now implied

(*g*) Every vendor of a lease was entitled to require this covenant, except a trustee in bankruptcy (see p. 186, note (*m*)), or assignors of underleases who or whose testators or intestates have not covenanted to perform the covenants in the original lease; nor could such a covenant be required as to an underlease if that was made at a peppercorn rent without covenant by the underlessee. See Davidson's Prec., Conv., 4th ed., vol. ii., pt. i., pp. 216-218. As to the object and construction of the covenant, see *Gooch* v. *Clutterbuck*, [1899] 2 Q. B. 148; *Harris* v. *Boots*, [1904] 2 Ch. 376.

Now this covenant may be omitted, as a covenant to the same effect is implied by sect. 77, sub-sect. (1) (c) of the L. P. Act, 1925 (set out under General Remarks, above, at p. 139).

(*h*) Upon a sale of a leasehold by executors, the title might generally have been accepted without inquiry as to whether all the debts have been paid, although more than twenty years had elapsed from the death. See *Re Whistler* (1887), 35 Ch. D. 561; *Re Venn and Furze's Contract*, [1894] 2 Ch. 101. But see *Re Verrell's Contract*, [1903] 1 Ch. 65, where the purchaser had actual notice that there were no unpaid debts. Now a conveyance to a purchaser of a legal estate is not invalidated by notice, that all debts, &c., are paid (A. E. Act, 1925, sect. 36, sub-sect. (8), set out under ASSENTS, General Remarks).

(*i*) See A. E. Act, 1925, sect. 36, sub-sect. (6), set out under ASSENTS, General Remarks, and compare recital in Precedent XVII.

purchaser henceforth, for the residue of the term of —— years thereby granted, at the rent thereby reserved, and subject to the covenants by the lessee and conditions therein contained, and henceforth to be paid, performed, and observed.

Covenant for indemnity by purchaser.

2. The purchaser doth hereby covenant with the vendors [and with each of them] that the covenants set out in Part IX. of the Second Schedule to the Law of Property Act, 1925, shall be deemed to be extended so as to indemnify the estate of the said X., as well as the vendors (*k*). [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

XXX.

ASSIGNMENT *of* LEASEHOLDS *by* TRUSTEE *in* BANKRUPTCY (*l*).

THIS ASSIGNMENT, made, &c., BETWEEN A., of, &c. (herein called "the trustee"), being the trustee of the property of B., a bankrupt, of the one part, and C., of, &c. (herein called "the purchaser"), of the other part [*recite lease to B. as in Precedent XXVIII*]. WHEREAS the said B. was on the —— day of —— adjudged a bankrupt by the High Court of Justice in Bankruptcy [*or* the County Court of ——, holden at ——, in Bankruptcy], and on the —— day of —— it was certified by the Board of Trade that the trustee was duly appointed and approved as trustee of the property of the said B.

Recital of bankruptcy.

AND WHEREAS the trustee has agreed to sell to the purchaser the hereditaments demised by the lease for the residue of the said term of —— years for the sum of £——. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— to the trustee as such trustee as aforesaid this day paid by the purchaser (the receipt whereof the trustee doth hereby acknowledge), the trustee, in exercise

Of contract for sale.

(*k*) As to the implied statutory covenant by the purchaser to pay the rent and perform covenants and indemnify the vendor, see note (*g*) on p. 184. The statutory covenant does not appear to quite meet the case here and is therefore extended, as above. The words "and with each of them" at the beginning of the covenant may be omitted (see L. P. Act, 1925, sect. 81).

(*l*) Full powers of sale are conferred on the trustee by sect. 55 of the Bankruptcy Act, 1914, and this Precedent may be adapted to assurances of freeholds.

It is not the practice to make the bankrupt a party. In fact, as he is divested of all his property, legal and equitable, he has nothing to convey; and any covenants for title which he may purport to give are meaningless and worthless.

The official name of a trustee in bankruptcy is "the trustee of the property of ——, a bankrupt" (inserting the name of the bankrupt): Bankruptcy Act, 1914, sect. 76.

PRECEDENT XXX.

OF LEASEHOLDS IN BANKRUPTCY.

Assignment. Parcels. Habendum.

of all statutory and other powers and AS TRUSTEE, Doth hereby assign unto the purchaser ALL the hereditaments demised by the lease, TO HOLD unto the purchaser for the residue of the said term of —— years at the rent reserved by and subject to the covenants by the lessee and conditions contained in the lease, and henceforth to be performed and observed (*m*). [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

XXXI.

PRECEDENT XXXI.

PART OF LEASEHOLD.

ASSIGNMENT *of* PART *of* LAND *held under one* LEASE, *with* COVENANTS *for securing Payment of a* PROPORTIONATE PART *of the* RENT (*n*).

Recital of lease;

THIS ASSIGNMENT, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS by a Lease (herein called "the lease") dated, &c., certain hereditaments (whereof the hereditaments hereinafter described form part) therein described as ALL THOSE [*parcels in lease*] were demised to the said —— for the term of —— years from the —— day of —— at the yearly rent of £20, subject to the covenants by the lessee and conditions therein contained.

—assignment to vendor;

AND WHEREAS [after divers mesne assignments and acts in the law ultimately] by an Assignment dated, &c., and made between [*parties*], the hereditaments comprised in the lease became vested in the vendor, for the then residue of the said term

---

As to covenant by purchaser for indemnity.

(*m*) The trustee in bankruptcy is not, as a rule, entitled to require any covenant on the part of a purchaser to pay the rent or to perform the covenants of the lease, or for indemnity; but is so entitled on assigning to a mortgagee who has prevented him from disclaiming: see *Ex parte Buxton*, 15 Ch. D. 289. But by the L. P. Act, 1925, sect. 77, sub-sect. (1) (c), the covenant in the Second Schedule, Part IX., is deemed to be included and implied, and although it may be varied or extended (s. 77, sub-sect. (6)), no express power to exclude it altogether is conferred. It is thought, however, that power to exclude such a covenant must necessarily be implied, and that a proviso to the following effect may be added by the purchaser and can hardly be objected to by the trustee:

"PROVIDED that the statutory covenant set out in Part IX. of the Second Schedule to the Law of Property Act, 1925, shall not be deemed to be included or implied in this Deed."

(*n*) See CONTRACTS, Precedent VI., Form XXIX., p. 12. The equitable apportionment of the rent which is assumed to be made without the consent of the lessor is binding as between the assignor and assignee and their respective successors in title (L. P. Act, 1925, sect. 190, sub-sect. (3)).

PRECEDENT XXXI.

PART OF LEASEHOLD.

of —— years (*o*). AND WHEREAS the vendor has agreed to sell to the purchaser, at the price of £——, such part of the hereditaments comprised in the lease as is hereinafter described, subject to the apportioned yearly rent of £10 and to the covenants and conditions hereinafter contained. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge) :—

—contract for sale;

—agreement to enter into special covenants.

1. The vendor, AS BENEFICIAL OWNER, Doth hereby assign unto the purchaser ALL THAT messuage with the coach-house, stables, offices, out-buildings, garden, and appurtenances belonging thereto, situate and being No. 10, —— Road, in the Parish of ——, in the County of —— (being part of the hereditaments comprised in the lease), TO HOLD unto the purchaser for the residue of the said term of —— years, subject to the payment of the apportioned yearly rent of £10, being one moiety of the said yearly rent of £20 reserved by the lease, and to the covenants by the lessee, and the conditions therein contained so far as regards the premises hereinbefore assigned.

Assignment of part of leasehold premises.

Habendum.

[2. The purchaser doth hereby covenant with the vendor that he, the purchaser, or his successors in title, will henceforth pay the apportioned yearly rent of £10, being one moiety of the said yearly rent of £20 reserved by the lease, and perform and observe all the covenants by the lessee and conditions therein contained so far as regards the premises hereinbefore assigned, AND WILL at all times keep the vendor and his successors in title, and such of the premises comprised in the lease as are retained, indemnified against all proceedings, costs, damages, claims, demands, and liability for non-payment of the said last-mentioned yearly rent of £10, or breach of the said covenants and conditions, or any of them, so far as regards the premises hereinbefore assigned (*p*).]

Covenant by purchaser to pay rent apportioned to property assigned;

—and indemnify vendor.

[3. The vendor doth hereby covenant with the purchaser that he, the vendor, or his successors in title, will henceforth pay the apportioned yearly rent of £10, being one moiety of the said yearly rent of £20 reserved by the lease, and perform and observe all the covenants by the lessee and conditions therein contained so far as regards such part of the hereditaments

Covenant by vendor to pay rent apportioned to property retained;

(*o*) The mesne and last assignments are here referred to for the purpose of explaining and simplifying the acknowledgment and undertaking as to deeds.

(*p*) This covenant may, if preferred, be omitted in reliance on the covenant set out in para. (i.) of Part X. of the Second Schedule, implied by virtue of sect. 77, sub-sect. (1) (D) (i) of the L. P. Act, 1925 (set out at p. 139), in whatever capacity the vendor assigns.

PRECEDENT XXXI.

PART OF LEASEHOLD.

therein comprised as are retained, AND WILL at all times keep the purchaser and his successors in title, and the premises hereinbefore assigned, indemnified against all proceedings, costs, damages, claims, demands, and liability for non-payment of the said last-mentioned yearly rent of £10, or breach of the said covenants and conditions, or any of them, so far as regards such of the premises comprised in the lease as are retained (*q*).]

—and indemnify purchaser.

Reciprocal charges by vendor and purchaser.

4. The vendor and the purchaser do hereby respectively charge the several parts of the hereditaments comprised in the lease and respectively retained and assigned with all money payable under their respective covenants hereinbefore expressed to be made [herein implied by virtue of sect. 77 of the Law of Property Act, 1925] (*r*).

Reciprocal grants of powers of distress and entry (*s*).

[5. Each of them, the vendor and the purchaser, doth hereby grant to the other of them, that if default shall be made in payment of the rent hereinbefore by either of them covenanted to be paid for —— days after any of the days by the lease appointed for payment of the said rent of £20, or there shall be a breach of any of the covenants hereinbefore on the part of either of them contained, it shall be lawful for the other of them, or his successors in title, into and upon the premises in respect of which such default or breach shall have occurred to enter and distrain, and the distress and distresses then and there found to dispose of in due course, as landlords may do in respect of distresses for rent reserved upon lease, and also to enter into and upon and to hold the same premises and take the rents and profits thereof, until by the means aforesaid, or some of them or otherwise, the rent so unpaid, and all costs and expenses incurred by reason of such default or breach shall have been fully paid and satisfied.]

Acknowledgment and undertaking by vendor.

6. The vendor doth hereby acknowledge the right of the purchaser to production and delivery of copies of the lease and other documents mentioned in the Schedule hereto, and doth

---

(*q*) As the assignment here is made by the vendor "as beneficial owner" this covenant may, if preferred, be omitted in reliance on sect. 77, sub-sect. (1) (D) (ii) of the L. P. Act, 1925 (set out at p. 140), but if the vendor assigns "as settlor," "as trustee," "as mortgagee," &c., the covenant set out in para. (ii) of Part X. of the Second Schedule, can only be implied "by express reference" to sect. 77 (see sect. 77, sub-sect. (4)), in which case it would seem to be simpler to set out the covenant in full.

(*r*) A charge to the above effect is generally added, and may be inserted whether the covenants in clauses 2 and 3 are expressed or implied (see sect. 77, sub-sects. (6) and (7)).

(*s*) The reciprocal powers of distress conferred by clause 5 may now be omitted in reliance on sect. 190, sub-sect. (4) of the L. P. Act, 1925, whereby express powers are now given. That such powers are not within the Bills of Sale Acts, see sect. 189, sub-sect. (1).

hereby undertake the safe custody thereof. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

SCHEDULE—*Documents to be produced.*

PRECEDENT XXXI.

PART OF LEASEHOLD.

XXXII.

ASSIGNMENT *of* LEASE *to* ONE PURCHASER *of* LEASEHOLD *sold in* LOTS *so that he may* GRANT UNDERLEASES *to the* OTHER PURCHASERS (*t*).

PRECEDENT XXXII.

ASSIGNMENT OF LEASE TO ONE PURCHASER ON SALE IN LOTS.

THIS ASSIGNMENT, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS by a Lease (herein called "the lease"), dated, &c., ALL that piece or parcel of land situate, &c. [*parcels from the lease*], was demised unto the said [*lessee*], for the term of —— years from the —— day of ——, at the yearly rent of £100, and subject to the covenants by the lessee, and the conditions therein contained. [AND WHEREAS the said [*lessee*] erected on the said piece of land the *ten* messuages in —— Street, in the said Parish of ——, mentioned in the Schedule hereto.] AND WHEREAS the premises became by assignment, and now are, vested in the vendor, for the residue of the said term of —— years. AND WHEREAS the vendor lately agreed to sell the premises to the purchaser and the other persons mentioned in the said Schedule, in the lots and at the prices mentioned in the said Schedule, and subject to such apportionments as therein mentioned of the said yearly rent of £100. AND WHEREAS it was also agreed that the purchaser should take an assignment of all the premises comprised in the lease, and should execute to the other purchasers underleases of the parts thereof purchased by them respectively as hereinafter mentioned. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— [*purchase-money payable by B.*], paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge), the vendor, AS BENEFICIAL OWNER, doth hereby assign unto the purchaser ALL THAT the said piece or parcel of land demised by the lease, [and the said *ten* messuages or tenements situate and being Nos. —— to

Recital of lease of a piece of building ground;

—of erection of houses thereon;

—that lease vested in vendor;

—of sale of leaseholds in lots to present and other purchasers;

—that B. will take assignment and grant underleases to the other purchasers.

Assignment.

Parcels.

(*t*) For the form of a condition of sale applicable to these circumstances, see CONTRACTS, Precedent VI., Form XXX., p. 122.

PRECEDENT XXXII.

ASSIGNMENT OF LEASE TO ONE PURCHASER ON SALE IN LOTS.

—— inclusive, —— Street, in the said Parish of ——, more particularly described in the Schedule hereto]; And all other, if any, the hereditaments demised by or now held under the lease, TO HOLD unto the purchaser, for the residue of the said term of —— years, at the rent reserved by and subject to the covenants by the lessee and conditions therein contained, and henceforth to be paid, performed and observed; AS TO the premises comprised in Lot 1 and described under that number in the said Schedule, for the sole use and benefit of the purchaser, AND as to the premises comprised in each of the other lots described in the said Schedule, Upon trust when thereunto required by the vendor or his successors in title, to execute a proper underlease thereof unto and at the cost of the purchaser thereof, or unto and at the cost of such other person as shall be nominated in that behalf by the vendor or his successors in title, for the residue of the said term of —— years except the last three days of such term, at the apportioned yearly rent mentioned in that behalf in the said Schedule, and subject to covenants by the underlessee with the said B., and conditions corresponding in all respects, except as to the amount of yearly rent thereby reserved, with the covenants by the lessee, and conditions contained in the lease, so far as such covenants and conditions respectively shall be applicable to the premises comprised in such underlease. [*Add if so desired*, "such underlease to be in the form contained in the Second Schedule hereto."] AND in the meantime until such underlease shall be executed as aforesaid, In trust for the vendor and his successors in title, subject to the agreements for the sale thereof hereinbefore mentioned, and subject in equity to the payment by the vendor and his successors in title of the apportioned yearly rent, and to the performance or observance by him or them of the covenants and conditions to be reserved by and contained in such underlease. [*As to any covenant by B. with A. for payment of rent and performance of covenants of lease, see Precedent XXVIII. Certificate if not over* £500, p. 149.] IN WITNESS, &c. (*u*).

Habendum for residue of term.

As to the lot bought by B. for him.

As to the rest of the premises in lease, in trust to grant the underleases to other purchasers.

Meanwhile in trust for vendor, subject to his contracts for sale.

SCHEDULE.

No. of Lot.	Description of Property.	Apportioned Yearly Rent.	Name and Address of Purchaser.

(*u*) See the next Precedent.

XXXIII.

Underlease *to a* Purchaser *of* part *of a* Leasehold *sold in* Lots, *the* Lease *having been assigned to* another Purchaser *at the same Sale* (*x*).

Precedent XXXIII.

Underlease to a purchaser of part of a leasehold.

THIS UNDERLEASE, made, &c., between B., of, &c. [*the purchaser, assignee of the lease*] (herein called "the assignee," which expression, where appropriate, includes his successors in title), of the first part, A., of, &c. [*vendor*] (herein called "the vendor"), of the second part, and C., of, &c. [*purchaser of an underlease*] (herein called "the purchaser," which expression, where appropriate, includes his successors in title), of the third part [*recital of lease as in last Precedent*]. [And whereas the said [*lessee*] erected on the said piece of land the messuage No. —— in —— Street, hereinafter demised, and *nine* other messuages in the same street, numbered respectively ——, and now standing on the said piece of land. And whereas the said leasehold land, messuages, and premises became by assignment, and at the respective times of the sale and of the execution of the assignment hereinafter recited were vested in the vendor for the then residue of the said term of —— years.] And whereas the vendor lately agreed to sell to the purchaser, at the price of £——, the [said] messuage and premises hereinafter demised, which form part of the premises comprised in the lease, at the apportioned yearly rent of £——. And whereas it was also agreed that all the premises comprised in the lease should be assigned to the assignee as the purchaser of part thereof, for the residue of the said term, and that he should grant to the purchaser and purchasers of other parts thereof underleases of the premises purchased by them respectively. And whereas in pursuance of the said agreement, by an Assignment [*i.e., last Precedent*] (herein called "the assignment") dated, &c., and made between the vendor, of the one part, and the assignee, of the other part, the premises comprised in the lease were assigned to the assignee, but as to the premises hereinafter demised upon trust to grant to the purchaser such underlease thereof as hereinafter is expressed. Now this deed witnesseth, that, for carrying out the said sale by the vendor to the purchaser, and in pursuance of the said trust, and in consideration of the sum of £—— now paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge) :—

Recital of original lease;

—of erection of houses by lessee;

—that lease vested in vendor;

—of agreement for sale at apportioned rent;

—of agreement that B. should take assignment of lease and grant underleases;

—of assignment accordingly.

1. The assignee, at the request of the vendor, Doth hereby Demise.

(*x*) See preceding Precedent.

PRECEDENT XXXIII.

UNDERLEASE TO A PURCHASER OF PART OF A LEASEHOLD.

demise unto the purchaser, ALL THAT messuage, &c. [*parcels*], TO HOLD unto the purchaser, for the residue of the said term of —— years granted by the lease, except the last *three* days thereof, YIELDING therefor unto the assignee and his successors in title during the said term hereby created, the yearly rent of £—— [*apportioned rent*] by equal [*half-yearly*] payments, on the —— day of ——, and —— day of —— (*y*), the first of such [*half-yearly*] payments to be made on the —— day of —— next.

Habendum.

—for sub-term.

Reddendum.

Covenant by C. to pay the apportioned rent and perform the covenants.

2. The purchaser doth hereby covenant with the assignee that the purchaser will henceforth pay to the assignee and his successors in title the said yearly rent of £——, at the times and in the manner hereinbefore appointed for payment thereof, and perform and observe all the covenants by the lessee (except the covenant for payment of rent), and the conditions contained in the lease, so far as the same respectively relate to the premises hereby demised, and keep the assignee indemnified against all actions, proceedings, costs, damages, claims, demands, and liability in respect of any breach of this covenant.

3. [*Proviso for re-entry*, p. 268, *substituting* "assignee" *for* "lessor" *and* "purchaser" *for* "lessee."]

4. The assignee doth hereby [*Covenant for quiet enjoyment*, p. 268, *substituting* "assignee" *for* "lessor" *and* "purchaser" *for* "lessee"].

Covenant by B. to pay rent and perform covenants of original lease (*z*).

5. The assignee doth hereby covenant with the purchaser that the assignee will during the said term hereby created pay the said yearly rent of £—— reserved by the lease, and perform and observe all the covenants by the lessee and conditions therein contained, and henceforth to be performed and observed so far as regards the premises therein comprised other than and except the premises hereinbefore demised, and keep the purchaser indemnified [*&c., as in Clause* 2].

Acknowledgment as to muniments.

6. The assignee doth hereby acknowledge the right of the purchaser to production and delivery of copies of the documents mentioned in the Schedule hereto [and doth hereby undertake

---

(*y*) The apportioned rent should be reserved half-yearly or quarterly, as in the original lease, and should be made payable before the rent days in the original lease.

(*z*) As to this covenant (which, it has been held, is merely collateral and does not run with the land) and its effect upon the preceding covenant for quiet enjoyment, see *Dewar* v. *Goodman*, [1909] A. C. 72. See *Lyle* v. *Smith*, [1909] 2 I. R. 58; and see L. P. Act, 1925, sects. 79, 80. Neither this covenant, nor the covenant in clause 2 appears to come within the provisions of sect. 77, for in that section "conveyance" does not include a demise by way of lease at a rent (sub-sect. (3)); although it is true that the underlease is made for the purpose of carrying out the sale.

the safe custody thereof]. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

SCHEDULE—*Documents to be produced* (*a*).

PRECEDENT XXXIII.

UNDERLEASE TO A PURCHASER OF PART OF A LEASEHOLD.

XXXIV.

ASSIGNMENT *of* LEASEHOLDS *by* MORTGAGOR *and* MORTGAGEE.

PRECEDENT XXXIV.

OF LEASEHOLDS BY MORTGAGOR AND MORTGAGEE.

THIS ASSIGNMENT, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the first part, B., of, &c. (herein called "the mortgagee"), of the second part, and C., of, &c. (herein called "the purchaser"), of the third part. WHEREAS by a Lease (herein called "the lease"), dated, &c., and made between [*lessor*], of the one part, and the vendor [*lessee*], of the other part, ALL THOSE [*parcels from the lease*] were demised to the vendor [*or* "the said ——"] for the term of —— years from the —— day of —— at the yearly rent of £——, and subject to the covenants by the lessee and conditions therein contained. [AND WHEREAS at the date of the mortgage next hereinafter recited the hereditaments comprised in the lease were vested in the vendor for the residue of the said term.] AND WHEREAS by a Mortgage (herein called "the mortgage"), dated the —— day of —— and made between the vendor, of the one part, and the mortgagee, of the other part, the said hereditaments were demised by the vendor to the mortgagee for the residue of the said term except the last day thereof by way of mortgage for securing payment of the sum of £—— with interest thereon as therein mentioned. AND WHEREAS the vendor has agreed to sell the said hereditaments to the purchaser for the residue of the term granted by the lease free from incumbrances for the sum of £——. AND WHEREAS the said sum of £—— remains owing to the mortgagee upon the security of the mortgage, but all interest thereon has been paid down to the date of these presents, and it has been agreed that the sum of £——, part of the said purchase-money, shall be paid to the mortgagee in discharge of the said mortgage debt and that he shall join in these presents in manner hereinafter appearing. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement and in consideration of the sum of £—— (part of the

Recital of lease (*b*).

—mortgage by sub-demise;

—contract for sale;

—state of mortgage debt.

Assignment and surrender.

(*a*) The documents here include the lease, mesne assignments, and the last assignment.

(*b*) The recital is adapted either to the case where the mortgagor was the original lessee or merely an assignee of the lease.

PRECEDENT XXXIV.

OF LEASEHOLDS BY MORTGAGOR AND MORTGAGEE.

purchase-money) paid by the purchaser to the mortgagee by the direction of the vendor (the receipt whereof the mortgagee doth hereby acknowledge), and of the sum of £—— (the residue of the purchase-money) paid by the purchaser to the vendor (the payment of which sum of £—— [*paid to mortgagee*] and the receipt of which sum of £—— [*paid to vendor*] making altogether the purchase-money of £——, the vendor doth hereby acknowledge).

1. The vendor, AS BENEFICIAL OWNER, Doth hereby assign and the mortgagee AS MORTGAGEE, by the direction of the vendor, Doth hereby assign and release unto the purchaser ALL the hereditaments demised by the lease, TO HOLD unto the purchaser for the residue of the term granted by the lease at the rent and subject to the covenants by the lessee and conditions in the lease reserved and contained and henceforth to be paid, performed and observed, but discharged from all principal money and interest secured by and from all claims under the mortgage TO the intent that the term created by the mortgage shall merge and be extinguished in the term granted by the lease.

Covenant by purchaser to pay rent, &c. (*c*).

[2. The purchaser doth hereby covenant with the vendor that the purchaser or his successors in title will henceforth pay the rent reserved by the lease and perform and observe all the covenants by the lessee and conditions therein contained, and keep the vendor indemnified against all actions, proceedings, expenses, claims, demands and liability on account of the non-payment of the said rent or any part thereof or the breach of the said covenants and conditions or any of them.] [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

XXXV.

PRECEDENT XXXV.

OF LEASEHOLDS BY MORTGAGEE UNDER STATUTORY POWER OF SALE.

ASSIGNMENT *of* LEASEHOLDS *by* MORTGAGEE *under his* STATUTORY POWER *of sale* (*d*).

THIS ASSIGNMENT, made, &c., BETWEEN A., of, &c. [*mortgagee*] (herein called "the vendor") of the one part, and B., of, &c. (herein called "the purchaser"), of the other part.

(*c*) As this is a conveyance for valuable consideration and the vendor and the mortgagee are conveying parties, a covenant to the same effect would be implied under sect. 77 (1) (c) of the L. P. Act, 1925. The mortgagee was usually made a covenantee, although merely underlessee, and therefore under no direct liability to the lessor (see *Hand* v. *Blow*, [1901] 2 Ch. 721); but the mortgagee is here omitted. Compare notes to Precedent XXVIII.

(*d*) As to the realisation of a mortgage of leaseholds by exercise of the implied statutory power of sale, see L. P. Act, 1925, sect. 89, set out under MORTGAGES, General Remarks.

WHEREAS by a Lease (herein called "the lease") [*continue recital as in last Precedent with requisite variations*]. AND WHEREAS, by a Mortgage (herein called "the mortgage"), dated the —— day of ——, and made between the said —— [*mortgagor*] of the one part and the vendor of the other part, the said —— demised the hereditaments comprised in the lease to the vendor for the residue of the said term except the last day thereof by way of mortgage for securing payment of the sum of £——, with interest thereon as therein mentioned. AND WHEREAS, the said principal sum of £—— with arrears of interest are due to the vendor upon the security of the mortgage, and he has agreed to sell the said hereditaments to the purchaser for the residue of the term granted by the lease free from incumbrances for the sum of £——. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge).

Recital of mortgage, &c.

1. The vendor, AS MORTGAGEE, in exercise of the power vested in him by the Law of Property Act, 1925 (*e*), and of all other powers, Doth hereby assign and release unto the purchaser ALL the hereditaments comprised in and demised by the lease, TO HOLD unto the purchaser for the residue of the term granted by the lease at the rent and subject to the covenants by the lessee and conditions therein reserved and contained and henceforth to be paid, performed, and observed, but DISCHARGED from all principal money and interest secured by and from all right of redemption and claims under the mortgage TO THE INTENT that the mortgage term may merge and be extinguished in the leasehold reversion affected by the mortgage.

Assignment.

2. The purchaser doth hereby covenant with the vendor [*as in the preceding Precedent unless omitted in reliance on the statute*]. [*Certificate if not over* £500, p. 149]. IN WITNESS, &c.

(*e*) See sects. 89, 101 to 107, &c., and MORTGAGES, General Remarks. Note that by sect. 89 the assignment may, as respects the leasehold reversion, be made in the name of the estate owner in whom it is vested. So, if preferred, the mortgagor may be added as a party (although not a party in person), as under the former practice, where he was so added by virtue of a power of attorney in the mortgagee. As, however, the conveyance operates to convey the leasehold reversion, the simpler course would seem to be to omit his name as a conveying party. Both this and the preceding Precedent may be adapted to cases where the mortgage was effected by a charge by way of legal mortgage, omitting the words "to the intent, &c."

XXXVI.

PRECEDENT XXXVI.

OF FREEHOLDS RESERVING RIGHT OF WAY.

CONVEYANCE *of* FREEHOLDS *to a* PURCHASER. RESERVATION *of a* RIGHT OF WAY.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS the vendor is seised of the hereditaments hereinafter described for an estate in fee simple in possession free from incumbrances and has agreed to sell the same for a like estate to the purchaser for the sum of £——. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge), the vendor, AS BENEFICIAL OWNER, Doth hereby convey unto the purchaser, ALL THOSE [*see* PARCELS] EXCEPT nevertheless and reserving unto the vendor and his successors in title and other the owners and occupiers for the time being of the land shown on the said plan or any part thereof, full and free right and liberty at all times hereafter, and for all purposes with or without horses, carts, carriages, or waggons, laden or unladen, to go, pass and repass, and to drive cattle, sheep, and other animals along, over, and upon the strip of land or road indicated on the said plan by dotted lines, TO HOLD unto the purchaser in fee simple. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

Recital of seisin and contract for sale.

Conveyance.

Reservation of right of way.

Habendum.

SCHEDULE—*Description of hereditaments.*

XXXVII.

PRECEDENT XXXVII.

OF FREEHOLDS AND LEASEHOLDS.

CONVEYANCE *of* FREEHOLDS *and* LEASEHOLDS *to a* PURCHASER.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS [*recital of seisin of freeholds and lease, &c., as in Precedents II. and XXVIII.*]. AND WHEREAS the vendor has agreed to sell the freehold hereditaments hereinafter described for an estate in fee simple in possession, free from incumbrances, and also the hereditaments demised by the lease for the residue of the said term free from incumbrances for the sum of £——. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchaser to

Recital of contract for sale;

the vendor (the receipt whereof the vendor doth hereby acknowledge).

PRECEDENT XXXVII. OF FREEHOLDS AND LEASEHOLDS.

1. The vendor, AS BENEFICIAL OWNER, Doth hereby convey unto the purchaser [*freeholds, see* PARCELS], TO HOLD unto the purchaser in fee simple.

Conveyance of freeholds.

2. The vendor, AS BENEFICIAL OWNER, Doth hereby assign unto the purchaser ALL the hereditaments demised by the lease (*f*), TO HOLD unto the purchaser for the residue of the said term of —— years, at the rent reserved by and subject to the covenants by the lessee, and conditions contained in the lease, and henceforth to be performed and observed. [*Covenant by purchaser to pay rent, and observe covenants and indemnify vendor in respect thereof if statutory covenant not relied on, see Precedent XXVIII; Certificate if not over* £500, p. 149]. IN WITNESS, &c.

Assignment of leaseholds.

SCHEDULE—*Description of freeholds.*

XXXVIII.

CONVEYANCE *of* FREEHOLD BUILDING LAND *in consideration of a* RENTCHARGE (*g*).

PRECEDENT XXXVIII. OF FREEHOLDS IN CONSIDERATION OF RENTCHARGE.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser") of the other part, WITNESSETH, that in consideration of the perpetual yearly rentcharge hereinafter reserved, and of the covenants on the part of the purchaser hereinafter contained.

Grant.

1. The vendor, AS BENEFICIAL OWNER, Doth hereby convey unto the purchaser ALL THAT parcel of land situate in the Parish

Parcels;

(*f*) See Precedent XXVIII., and notes thereto.

(*g*) In some parts of the country it is usual, in the case of land intended for building purposes, to sell land in consideration of a perpetual rentcharge, and in order to effectually secure the payment of the rentcharge the purchaser is usually made to covenant to erect buildings of a certain value, and keep them up. A covenant to insure the buildings against loss and damage by fire and a power of re-entry by the vendor on non-performance of the building covenants, are also usual, and are inserted accordingly. As to the meaning of "rent" and "rentcharge," see *Re Gerard and Beecham*, [1894] 3 Ch. 295; and L. P. Act, 1925, sect. 205, sub-sect. (1) (xxiii). As to whether fiduciary owners with power of sale can sell in consideration of a rentcharge, see Sug. Pow. 953; Farwell on Powers (1916), p. 622; *Alexander* v. *Clarke*, [1920] 1 I. R. 47. The T. Act, 1925, s. 12, confers no such power, but a tenant for life may sell settled land in consideration of a perpetual or terminable rent (S. L. Act, 1925, sect. 39), and trustees for sale of land have all the powers of a tenant for life under the S. L. Act, 1925 (L. P. Act. 1925, sect. 28). As to the stamp, see Stamp Act, 1891, sect. 56, sub-sect. (2), and *Martin* v. *I. R. Commrs.* (1904), 91 L. T. 453.

PRECEDENT XXXVIII.

OF FREEHOLDS IN CONSIDERATION OF RENTCHARGE.

of ——, in the County of ——, and containing —— or thereabouts, which is delineated with the abuttals and dimensions thereof on the Plan annexed to these presents, and thereon coloured ——, TOGETHER with full right for the purchaser and his successors in title and his and their tenants, servants, workmen, and visitors in common with the vendor and his successors in title and his and their tenants, servants, workmen, and visitors, and others for the time being having by grant from the vendor or his successors in title or otherwise the like right, to pass and repass at all times and for all purposes with or without horses, carts, and carriages over and along the adjoining road called —— Road and over and along the several other roads shown on the said Plan and belonging to or intersecting the Estate called the —— Estate, the boundaries whereof are indicated on the said Plan by a border line of ——, AND together with the right at all times hereafter to use in common with the vendor and his successors in title and others for the time being having by grant from the vendor or his successors in title or otherwise the like right, the sewer under the —— Road (*h*), TO HOLD unto the purchaser in fee simple, RESERVING thereout to the vendor in fee simple a perpetual yearly rentcharge of £——, to be charged upon and payable out of the said parcel of land, and to be paid by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year without deduction, the first half-yearly payment thereof to be made on the —— day of —— next (*k*); AND SUBJECT and charged as aforesaid TO the purchaser in fee simple (*l*).

—with rights of way and severage.

Habendum.

Reserving to vendor a perpetual rentcharge (*i*).

—and subject thereto, to the purchaser.

2. The purchaser doth hereby covenant with the vendor that the purchaser or his successors in title (1) WILL henceforth pay to the vendor or his successors in title the said yearly rentcharge

Covenants by purchaser to pay the rentcharge;

(*h*) The road and sewer are assumed to have been made.

(*i*) This reservation operates without any execution by the purchaser (but in this case certainly, and generally upon a reservation of a rentcharge, the purchaser should execute) or any regrant by him, to vest the rentcharge in the vendor (see L. P. Act, 1925, sect. 65).

(*k*) The powers of distress and entry formerly expressly given in limitations of rentcharges are omitted in reliance on the L. P. Act, 1925, sect. 121. The doubt raised by some writers as to whether the rule of perpetuities did not apply to these powers was removed by sect. 6 of the C. Act, 1911, which is now replaced by sub-sect. (6) of sect. 121 of the L. P. Act, 1925.

Excluding power to create term.

(*l*) A clause excluding the statutory power to create a term (see L. P. Act, 1925, sect. 121) was sometimes inserted here, for the power referred to in effect enables the land charged to be summarily sold on default being made in payment of the rentcharge, and this is seldom or never intended (see *Blackburne* v. *Hope-Edwardes*, [1901] 1 Ch. 419, where the existence of a term created for securing the rentcharge was held inconsistent with the right to have a sale of the inheritance), but, it is thought, a purchaser cannot insist on the insertion of such a clause, apart from express stipulation in the contract.

at the times and in the manner aforesaid (*m*); (2) WILL forthwith erect and for ever maintain along each side of the said parcel of land a substantial oak fence, or brick or stone wall, not less than five feet or more than eight feet in height; (3) WILL within —— years from the date hereof, at his or their own expense, build and finish upon the said parcel of land one and not more than one good and substantial dwelling-house with suitable coach-houses, stabling, offices, drains, and appurtenances thereto which, when finished, shall be of the clear yearly value of £—— at the least; (4) WILL at all times repair, and keep in good condition, and of such yearly value as aforesaid, and adequately insured against loss or damage by fire the said dwelling-house and appurtenances when so built and finished (*n*); (5) WILL on demand produce the policy or policies of such insurance, and the receipt for the current year's premium in respect thereof to the vendor or his successors in title; (6) WILL build and finish the said dwelling-house and appurtenances in accordance with the regulations and specifications set forth in the Schedule hereto (*o*) and to the satisfaction in all things of the surveyor for the time being of the vendor or his successors in title, owner or owners for the

—and to fence;

and to build one house with stables, &c.;

—and keep the same in repair and insured and produce policies;

—to finish dwelling-house, &c., according to schedule;

(*m*) This covenant is retained, as giving the vendor an additional remedy against the purchaser for recovery of the rentcharge. It has been decided that, since the abolition of real actions by the Real Property Limitation Act, 1833, an action of debt for recovery of a rentcharge will lie against the owner of the land charged (*Thomas* v. *Sylvester* (1873) L. R. 8 Q. B. 368; *Searle* v. *Cooke* (1890) 43 Ch. 519; *Pertwee* v. *Townsend*, [1896] 2 Q. B. 129 (where it was decided that the liability is for the whole debt irrespective of the amount of the annual profits of the land charged); *Foley's Charity Trustees* v. *Dudley Corporation*, [1910] 1 K. B. 317 (where the land charged was a highway); but see *Re Blackburn Society* (1889) 42 Ch. D. 343; and *Re Herbage Rents, Greenwich* [1896] 2 Ch. 811, that the action did not lie against a tenant for years in occupation of the land charged. But it does lie against a mortgagee though not in possession; *Cundiff* v. *Fitzsimmons*, [1911] 1 K. B. 513). In order, as far as possible, to make the burden of the covenant run with the land charged it was usual for the covenantor to covenant "for himself and his assigns," but now the covenant has effect as if his successors in title were mentioned (see L. P. Act, 1925, sect. 79). It should be noted that on a subsequent conveyance for value of the land subject to the rentcharge covenants to pay the rentcharge and indemnify the vendor are now implied (see L. P. Act, 1925, sect. 77, set out in General Remarks above).

(*n*) As to the effect and obligation of covenants as to building and similar covenants in a conveyance in fee, see Dav. Prec. Conv., 4th ed., Vol. II., Pt. I., p. 510 n. (*g*), and Dart, V. & P. (1905), pp. 767 *et seq.* The assignee of the grantee of the land is not liable to the assignee of the rentcharge on affirmative covenants: *Haywood* v. *Brunswick, &c., Society* (1881), 8 Q. B. D. 403; *Austerberry* v. *Oldham Corporation* (1885) 29 Ch. D. 750; and, as to negative covenants, *Re Nisbet and Potts* [1906] 1 Ch. 386; *London C. C.* v. *Allen*, [1914] 3 K. B. 642; *Smith* v. *Colbourne*, [1914] 2 Ch. 533.

Affirmative and negative covenants.

(*o*) The schedule should refer to the building line (if any), and prescribe the materials and mode of construction. Compare Precedent XLII. and the first schedule to that Precedent.

PRECEDENT XXXVIII.

OF FREEHOLDS IN CONSIDERATION OF RENTCHARGE.

time being of the mansion-house marked —— on the said Plan; (7) WILL NOT erect or suffer to be erected on the said parcel of land any building except the said dwelling-house and appurtenances hereinbefore covenanted to be erected, or make or suffer to be made any alteration in the elevation or architectural design of the said dwelling-house and its appurtenances without the previous licence in writing of the vendor or his successors in title, owner or owners as aforesaid; (8) WILL NOT do or suffer to be done upon the said parcel of land or the said dwelling-house and appurtenances or any part thereof anything which may be or become a nuisance or an annoyance to the vendor or his successors in title, or the owners or occupiers for the time being of the residue of the said —— Estate or any of them; (9) WILL NOT use the said parcel of land or the said dwelling-house and appurtenances or any part thereof for any trade, business, or profession or otherwise than as a private dwelling-house and appurtenances thereto without the previous licence in writing of the vendor or his successors in title, owner or owners as aforesaid; (10) AND WILL, until the —— Road and the sewer under the same shall be taken over by the local authority, contribute and pay at such time and in such manner as the surveyor for the time being of the vendor or his successors in title, owner or owners as aforesaid, shall direct a proper proportion of the expenses of repairing and maintaining the said road (including the footpaths) and sewer under the same, such proportion to be from time to time ascertained by the said surveyor and to be recoverable by the vendor or his successors in title, owner or owners as aforesaid by any of the ways and means by which the same would have been recoverable if the same had formed part of the said rentcharge hereinbefore limited and were in arrear.

—not to alter buildings (*p*).

—not to commit nuisance;

—or use except as private residence;

—and to contribute to maintenance of road and sewer, until taken over by local authority (*q*).

Proviso for re-entry on breach of covenants:

3. PROVIDED ALWAYS, that in case there shall be a breach of any of the covenants hereinbefore contained on the part of the

Restrictive covenants.

(*p*) Where (as is assumed in this Precedent) the land forms part of a building estate, it is convenient that restrictive covenants of this description should be entered into with the grantee, as owner of some particular portion of the estate, so that the general control of the estate may, as far as possible, go with that portion, and remain in one hand. See *Rogers* v. *Hosegood*, [1900] 2 Ch. 388; *Milbourn* v. *Lyons*, [1914] 2 Ch. 231; *Ives* v. *Brown*, [1919] 2 Ch. 314; *Northbourne* v. *Johnston*, [1922] 2 Ch. 309; *Chambers* v. *Randall* [1923] 1 Ch. 149. The law as to restrictive covenants is still very unsettled, see Jully (1909); Wms. V. & P. (1922), 467, &c.; Behan on The Use of Land as affected by Covenants (1924).

(*q*) If the road and sewer be not made, a covenant to make and maintain both, or a moiety of both, may be substituted. But this is inconvenient, unless the land sold comprises the whole road for some distance and the sites on both sides, in which case there must in the operative part be a reservation of the vendor's rights over the road and sewer when made. As to the effect of "taking over," see *Kelly* v. *Barrett*, [1924] 2 Ch. 379; *Regent's Canal &c. Co.* v. *Gibbons*, [1925] 1 K. B. 81.

PRECEDENT XXXVIII.

OF FREEHOLDS IN CONSIDERATION OF RENTCHARGE.

purchaser or his successors in title in relation to the said parcel of land or the said dwelling-house and appurtenances, or in relation to the policy or policies aforesaid, then if and whenever the same shall happen, it shall be lawful for the vendor or his successors in title, owner or owners for the time being of the said rent-charge hereinbefore limited into and upon the said parcel of land and the said dwelling-house and appurtenances or any part thereof in the name of the whole to enter; WITH LIBERTY on each occasion of his or their so entering to do any act which may be requisite specifically to perform the said covenants on the part of the purchaser or his successors in title hereinbefore contained, AND to continue in possession of the said premises until the purchaser or his successors in title shall have reimbursed to the vendor or his successors in title all the reasonable costs and expenses which he or they shall necessarily or properly incur in or about the doing of any such act as aforesaid, together with interest thereon, at the rate of 5 per cent. per annum from the time or respective times of the same having been paid by the vendor or his successors in title, or until the same shall have been satisfied out of the rents and profits of the same premises (*r*). [*Certificate if not over* £500, p. 149]. IN WITNESS, &c.

—with power to specifically perform the covenants.

—and to retain possession until costs reimbursed.

SCHEDULE—*Specifications.*

XXXIX.

CONVEYANCE *of* FREEHOLD LAND SUBJECT *to a* RENTCHARGE.

PRECEDENT XXXIX.

OF FREEHOLD LAND SUBJECT TO RENTCHARGE.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser") of the other part, WITNESSETH, that in consideration of the sum of £—— paid by the purchaser to the vendor for the purchase of the fee simple in possession of the hereditaments hereinafter conveyed, subject as hereinafter mentioned (the receipt whereof the vendor doth hereby acknow-

(*r*) An acknowledgment and undertaking as to deeds should be added, if it is required and is not taken by a separate instrument. It should be noticed that a conveyance of this kind has many points in common with a building lease, which is often preferred, and, if for a sufficiently long term, is perhaps more convenient for both parties.

As the provisions of sect. 45 of the C. Act, 1881, did not extend to a rent reserved on a sale (sub-sect. (5)), a power was often inserted to enable the purchaser of the land to redeem the rentcharge. Now, however, a rent reserved on a sale may be redeemed on requisition made to the Minister of Agriculture and Fisheries (L. P. Act, 1925, sect. 191).

Redemption of rentcharge.

PRECEDENT XXXIX.

OF FREEHOLD LAND SUBJECT TO RENTCHARGE.

ledge), the vendor, AS BENEFICIAL OWNER, Doth hereby convey unto the purchaser [*parcels*, p. 197, *down to* "thereon coloured ——"], TOGETHER WITH the dwelling-house and buildings erected thereon, known as ——, TO HOLD unto the purchaser, in fee simple, subject to a yearly rent-charge of £——, which by a Conveyance dated the —— day of ——, and made between M. N., of the one part, and X. Y., of the other part, was limited to the said M. N. in fee simple, and also subject to the covenants on the part of the said X. Y., and provisions in the same conveyance contained in relation to the repair, maintenance, and insurance of the said dwelling-house and buildings and otherwise (*s*). [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

Conveyance.

Parcels.

Habendum.

Subject to the rent-charge and covenants.

XL.

PRECEDENT XL.

OF ENFRANCHISED COPYHOLD SUBJECT TO APPORTIONED RENTCHARGE.

CONVEYANCE *of* LAND (*formerly copyhold*) ENFRANCHISED *under the old law subject to an* APPORTIONED RENTCHARGE.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS the hereditaments hereinafter described formed part of certain hereditaments which were formerly copyhold of the Manor of ——, of which the vendor was the copyhold tenant, and to which he was beneficially entitled in fee simple, and by a Deed of Enfranchisement dated, &c. [*before* 1926, and made between [*lord of the manor*], of the one part, and the vendor of the other part, all the said hereditaments, including the hereditaments hereinafter described were enfranchised and conveyed to the vendor in fee simple to be held as freehold, free from all incidents of copyhold tenure, but subject to the yearly rentcharge of £50. AND WHEREAS there has been no legal apportionment of the said rentcharge, but it has been agreed as between the vendor and the purchaser that the said yearly rentcharge of £50 shall be apportioned so that the hereditaments hereinafter described shall be subject to an apportioned yearly rentcharge of £10 and that the remainder of the said hereditaments which

Recital that the land is enfranchised copyhold subject to rentcharge also affecting other land (*t*).

—of agreement to apportion rentcharge.

(*s*) Formerly here followed covenants by the purchaser to pay the rent-charge, perform the covenants and indemnify the vendor. Covenants to this effect are now implied by the L. P. Act, 1925, sect. 77, sub-sect. (1) (A), set out under General Remarks above. For a conveyance subject to an apportioned rentcharge, see next Precedent.

(*t*) These recitals may be adapted to the case where the land was enfranchised by the new law subject to a rentcharge (compare the next Precedent with the last preceding Precedent).

PRECEDENT XL.

OF ENFRANCHISED COPYHOLD SUBJECT TO APPORTIONED RENTCHARGE.

are retained by the vendor shall be subject to an apportioned yearly rentcharge of £40, and the vendor has agreed to sell to the purchaser the hereditaments hereinafter described for an estate in fee simple in possession, free from incumbrances, but subject to the apportioned yearly rentcharge of £10 for the sum of £——. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge), the vendor Doth hereby, AS BENEFICIAL OWNER, convey unto the purchaser ALL THOSE hereditaments described in the Schedule hereto, TO HOLD unto the purchaser in fee simple, subject to the apportioned yearly rentcharge of £10 (*u*). [*Acknowledgment and undertaking as to documents, see* ACKNOWLEDGMENTS, &c. (*x*); *Certificate if not over* £500, p. 149]. IN WITNESS, &c.

—and sell subject to apportioned rentcharge.

Conveyance.

Habendum subject to apportioned rentcharge.

SCHEDULE— *Description of hereditaments* (*y*).

XLI.

CONVEYANCE *of* LAND (*formerly copyhold*) ENFRANCHISED *under the new law* (*z*).

PRECEDENT XLI.

OF LAND ENFRANCHISED UNDER NEW LAW.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS

Recital of enfranchisement

(*u*) In this case the consent of the lord of the manor is supposed not to have been obtained (although in practice this is often arranged), and if such consent was obtained, there would be implied a covenant by the purchaser in the terms of Part VII. of the Second Schedule to the L. P. Act, 1925 (see sect. 77, sub-sect. (1) (A), set out under General Remarks, p. 137). Where, however, as here, the apportionment is equitable only, and the vendor conveys "as beneficial owner" covenants by the purchaser and the vendor in the terms set out in Part VIII. of the Second Schedule are implied, by virtue of sect. 77, sub-sect. (1) (B), set out in General Remarks, p. 138, but if the vendor conveys in some other capacity, *e.g.*, "as trustee," &c., a covenant by the vendor is not so implied, unless by express reference to sect. 77 of the Act (see sub-sect. (4), p. 140). As to the mutual remedies of vendor and purchaser in the case of an equitable apportionment, see sect. 190 of the same Act.

(*x*) As to the Court Rolls, if the lord of the manor had included them in his acknowledgment and undertaking in the enfranchisement deed, the benefit of such acknowledgment and undertaking would pass to the purchaser (see L. P. Act, 1925, sect. 64, set out under ACKNOWLEDGMENTS). Apart from this, and whether in the custody of the lord or of the Master of the Rolls, the rights of the purchaser as successor in title to the enfranchised tenant are not clear (see *Re Agg-Gardner* (1884), 25 Ch. D. 600). Whatever rights he may have are not prejudiced by the statutory provisions for placing manorial documents in the custody of the Master of the Rolls (L. P. Act, 1924, 2nd Sched., sect. 2). See also *Beaumont* v. *Jeffery*, [1925] Ch. 1.

(*y*) This description often refers to the old description on the Court Rolls.

(*z*) As to the enfranchisemnt of copyholds under the L. P. Act, 1922, and

PRECEDENT XLI.

OF LAND ENFRANCHISED UNDER NEW LAW.

the hereditaments hereinafter described were formerly copyhold of the Manor of ——, but, by virtue of the Law of Property Act, 1922, were, on the 1st day of January, 1926, enfranchised subject to the manorial incidents saved by Part V. of that Act. AND WHEREAS, at the date of such enfranchisement, the vendor was the tenant on the Court Rolls, and was also beneficially entitled to the said hereditaments in fee simple in possession, free from incumbrances. AND WHEREAS, by a Compensation Agreement (*a*), dated, &c., and made between X. (lord of the said manor), of the one part, and the vendor, of the other part, it was agreed that the compensation for the extinguishment of such manorial incidents as aforesaid [and of the rights of the lord in or to any mines and minerals in or under the land hereinafter described, and the sporting and other rights affecting the same, preserved by the Twelfth Schedule to the Law of Property Act, 1922], should be the sum of £——, and by a Receipt (*b*), endorsed on the said compensation agreement, the said lord acknowledged that all rents, fines, reliefs, heriots and fees, payable in respect of the said hereditaments, had been duly discharged, and acknowledged the receipt of the said sum of £——. AND WHEREAS the vendor has agreed to sell the said hereditaments to the purchaser for an estate in fee simple in possession free from incumbrances, at the price of £——. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £——, paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge), the vendor, AS BENEFICIAL OWNER, Doth hereby convey unto the purchaser, ALL [*see* PARCELS], TO HOLD unto the purchaser in fee simple. [*Acknowledgment as to deeds retained*, p. 23. *Certificate if not over* £500, p. 149.] IN WITNESS, &c. (*c*).

—of title of vendor;

—of compensation agreement;

—of receipt of compensation money.

---

the extinguishment of manorial incidents, see General Remarks under CONTRACTS, &c., and also Precedent VI. Special Conditions Nos. XVIII., &c. under the same Subject Heading.

(*a*) For the Statutory Form of a Compensation Agreement, see Precedent VII under CONTRACTS, &c.

(*b*) For the Statutory Form of Receipt, see Precedent VIII. under CONTRACTS, &c.

(*c*) If the manorial incidents were not extinguished the recitals of the Compensation Agreement and Receipt will be omitted and the Habendum will be "**Subject to the manorial incidents saved by the Law of Property Act, 1922, so long as the same are subsisting and until extinguished by operation of law or otherwise.**" If the enfranchisement was made subject to a rentcharge, the rentcharge will be referred to in the recitals, and the Habendum will be "**Subject to the said rentcharge,**" and see note (*s*) to Precedent XXXIX. As to an apportioned rentcharge, see the last preceding Precedent.

XLII.

Conveyance *of a* Building Plot (*d*).

Precedent XLII.

Of a building plot.

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WITNESSETH, that in consideration of the sum of £——, paid by the purchaser to the vendor, for the purchase of the fee simple of the hereditaments hereinafter conveyed, subject as hereinafter mentioned (the receipt whereof the vendor doth hereby acknowledge),

1. The vendor, AS BENEFICIAL OWNER, doth hereby convey unto the purchaser ALL THAT parcel of land situate at or near —— —, in the County of ——, containing —— or thereabouts, and particularly delineated with the abuttals and the linear dimensions, as nearly as may be thereof on the Plan hereto, and thereon edged with a verge line of —— and marked ——, the same being part of the —— Estate as shown on the —— Estate Map (*e*) of the vendor marked ——, from which the said Plan is extracted, TOGETHER WITH the right of using for all ordinary purposes in common with the vendor and his successors in title, and all other persons having or by grant from the vendor or his successors in title, or otherwise acquiring the like right, the road delineated on the said Plan, and thereon coloured ——, and known or intended to be known as —— Road, so far as the same forms part of the said —— Estate, and all other roads made and opened, or which shall hereafter be made and opened for general use upon the same estate and the footpaths thereof, and the sewers, drains, and watercourses within and under the same respectively: AND TOGETHER also with the benefit of the restrictions and stipulations set forth in the First Schedule hereto (*f*),

Parcels;

—with right of using roads, &c.

—and of building restrictions applicable to the estate.

(*d*) Compare Precedent XXXVIII.

(*e*) It is often desirable to indicate the area to which the building stipulations apply. This may be done by showing the estate on a small scale in the margin of the plan to the deed; and in that case it will suffice to say "shown on the said plan."

(*f*) In the schedule referred to are set out the stipulations relating to the whole estate, and it is submitted that this is the proper course. Sometimes—perhaps more frequently—only those relating to the purchased plot are set out, and in such a case the following clause may be substituted for that in the text relating to building restrictions:—

"AND TOGETHER also with the benefit, so far as the vendor can grant the same, of all restrictions which have been or shall hereafter be imposed by the vendor or his successors in title, upon the respective purchasers of other parts of the said estate for the common or general advantage thereof [but not so as to impose upon the vendor or his successors in title, any obligation

PRECEDENT XLII.

OF A BUILDING PLOT.

so far as the same respectively relate to or affect the remainder of the said estate; EXCEPT AND RESERVED unto the vendor and his successors in title, and all other persons having or by grant from the vendor, or his successors in title, or otherwise acquiring the like right, but in common with the purchaser and his successors in title, the right of using for all ordinary purposes [so much of the said parcel of land as on the said Plan is coloured ——, being that portion thereof which forms or is intended to form part of (*g*)] —— Road aforesaid, and the footpaths thereof, and the sewers, drains, and watercourses within and under the same; [AND EXCEPT AND RESERVED unto the vendor and his successors in title the rights necessary for making up and completing, if he or they shall think fit so to do, the same road, and making and laying thereunder sewers, drains, and watercourses, and water and gas and electric and other pipes and conveniences (*h*)], TO HOLD unto the purchaser, in fee simple, subject to the restrictive and other stipulations set forth in the First Schedule hereto, so far as the same relate to or affect the said parcel of land hereinbefore granted.

Reservation of rights over road

and of making road, and laying pipes, &c.

Habendum subject to stipulations in schedule.

2. The purchaser doth hereby covenant with the vendor that the purchaser [and his successors in title, the owners or occupiers for the time being of the land hereby conveyed (*i*)] will at all times

Covenant by purchaser to observe stipulations in schedule (*i*).

---

to enforce, or so as to preclude him or them from releasing or waiving such restrictions or any of them]."

See as to the position and reciprocal rights and obligations of purchasers under a general building scheme, and also where there is no general scheme, but various persons purchase from the same vendor, and each of them enters into similar covenants, the benefit of which is annexed to the lands purchased by the others: *Reid* v. *Bickerstaff*, [1909] 2 Ch. 305, and *Mayner* v. *Payne*, [1914] 2 Ch. 555; *Ives* v. *Brown*, [1919] 2 Ch. 314; *Northbourne* v. *Johnston*, [1922] 2 Ch. 309; *Chambers* v. *Randall*, [1923] 1 Ch. 149.

As to the power of any person interested in freehold land affected by any restriction as to the user thereof or the building thereon to apply for its discharge or modification to "the Authority" as defined by the section, see sect. 84 of the L. P. Act, 1925.

(*g*) In the draft from which this Precedent was taken, a moiety of so much of the road as abutted on the plot was coloured on the plan, and included in the conveyance, and this reservation was desirable for that reason. Ordinarily no part of the road is expressly included, and probably under such circumstances the whole reservation may be omitted with safety, regard being had to the form of the grant of a right of way, and to the general scheme.

(*h*) This reservation would be generally omitted. See the last preceding note. Commonly it is stipulated that the purchaser shall contribute to the expenses of repairing the road until taken over by the local authority, and if that be intended a provision accordingly (see p. 200) should be inserted in the schedule.

(*i*) Words (which were formerly inserted) indicating the intention that the burden of the covenant shall pass to the "successors in title" (*i.e.*, the owners or occupiers for the time being of the land), are now implied by law (see L. P. Act, 1925, sect. 79. Similarly as to the benefit of the covenant (see sect. 78).

hereafter observe and perform the restrictions and stipulations set forth in the First Schedule hereto, so far as the same relate to or affect the said parcel of land hereinbefore conveyed.

Acknowledgment and undertaking as to documents.

3. The vendor doth hereby acknowledge the right of the purchaser to the production and to delivery of copies of the documents of title in the possession of the vendor, which are specified in the Second Schedule hereto, and doth hereby undertake the safe custody thereof. [*Certificate if not over* £500, p. 149]. IN WITNESS, &c.

FIRST SCHEDULE—*Restrictions and Stipulations.*

1. EVERY purchaser shall forthwith make and for ever maintain proper boundary walls or fences not exceeding —— feet nor less than —— feet in height on the plot or plots purchased by him on the sides marked **T** on the —— estate map of the vendor marked ——.

2. No house or building other than a private dwelling-house with or without appropriate coach-houses and stabling, motor-car or cycle houses and greenhouses, shall be erected on any plot, and no house or other building shall be erected except in such situation and position as shall have been previously indicated to and approved of in writing by the vendor or otherwise than in conformity with plans, elevations, and specifications which shall have been previously submitted to and approved of in writing by him, nor shall any alteration therein or addition thereto be made without the like approval previously obtained. No excavation shall be made on any plot except such as may be necessary for the buildings to be erected thereon, nor shall any gravel, earth, or other material be removed therefrom without the previous consent in writing of the vendor.

3. No house to be erected pursuant to the preceding stipulation shall be on plots —— of less value than £——, or on plots —— of less value than £——, such value being in every case exclusive of outbuildings. The value of a building is the amount of its net first cost in materials and labour of construction only, estimated at the lowest current prices.

4. THE line of frontage of the buildings on the several plots shall not approach nearer the road or roads than the line (if any) marked "building line" on the map, except as regards porticoes and bay windows, or similar structures, which shall not project more than four feet beyond such line.

5. THE plots shall not nor shall any building erected on any of them be used as a hospital, or for any offensive, noisy, or dangerous pursuit or occupation, or for any purpose which shall

PRECEDENT XLII.

OF A BUILDING PLOT.

be a nuisance or annoyance to the vendor or the owners or occupiers of any other part or parts of the said estate or any of them, or for any trade or business, and no building erected shall be used otherwise than as a private dwelling-house, or as a coach-house or stabling, motor-car or cycle house or greenhouse connected therewith. No operative machinery or hut, shed, caravan, outdoor sleeping apartment, or other like structure or erection shall be fixed or placed on any plot except with the previous approval in writing of the vendor. And no portion of any plot shall be used as a road or way from or to any land adjoining or adjacent to the estate of the vendor.

6. ANY question which may arise as to the value of any house built or otherwise under or in connection with these stipulations shall be determined by the vendor's surveyor for the time being, whose decision shall be absolutely binding and conclusive.

7. NOTHING hereinbefore contained shall oblige the vendor to observe or enforce the foregoing stipulations or any of them in respect of any of the plots [or preclude him from waiving such stipulations or any of them in respect of any plot or plots, and he shall be at liberty, if he shall think fit so to do, effectually to release any plot or plots from such stipulations of any of them].

8. IN these stipulations the expression "vendor" includes his successors in title, owners or occupiers of any part of the —— Estate for the time being remaining unsold, and the expression "purchaser" includes his successors in title, owners or occupiers of the land hereby conveyed.

SECOND SCHEDULE—*Documents to be produced* (*k*).

XLIII.

PRECEDENT XLIII.

OF HOUSE AND LAND SUBJECT TO RESTRICTIONS.

CONVEYANCE *of* HOUSE *and* LAND *subject to the* RESTRICTIONS *imposed by the previous Conveyance* (*l*).

THIS CONVEYANCE, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c.

(*k*) Including the estate plan. As the purchaser here is assumed not to hold or obtain possession of the documents forming the common title, he may (notwithstanding any stipulation to the contrary) require that a memorandum giving notice of the restrictions and stipulations in the First Schedule be written or endorsed on, or, where that is impracticable, be permanently annexed to, a document selected by him which forms part of the common title and is retained in the possession or power of the vendor (see L. P. Act, 1925, sect. 200). This section (see sub-sect. (4) (A)) does not affect the obligation to register the restrictive covenant as a land charge (see L. C. Act, 1925, sect. 10 (1) Class D (ii)).

(*l*) See the preceding Precedent.

PRECEDENT XLIII.

OF HOUSE AND LAND SUBJECT TO RESTRICTIONS.

(herein called "the purchaser"), of the other part. WHEREAS this Deed is supplemental to a Conveyance, dated, &c., and made between the original vendor, of the one part, and the vendor, of the other part (herein called "the principal deed"), whereby a certain parcel of land (being the land hereby conveyed) which formed part of the —— Estate, together with the rights of way and drainage and the benefit of the restrictions and stipulations over the remainder of the said estate therein mentioned, except and reserving to the original vendor the rights therein mentioned, were conveyed to the vendor in fee simple, subject to the same restrictions and stipulations which are set forth in the First Schedule hereto. AND WHEREAS, since the date of the said conveyance, fences have been made and a private dwelling-house has been erected on the said land in compliance with the said restrictions and stipulations. AND WHEREAS the vendor has agreed to sell to the purchaser the hereditaments hereinafter described for an estate in fee simple in possession, free from incumbrances, but subject to the said restrictions and stipulations, for the sum of £——. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge) :—

Recital of former conveyance;

—of subsequent building;

—of agreement for sale.

1. The vendor, AS BENEFICIAL OWNER, Doth hereby convey unto the purchaser ALL THOSE hereditaments described in the Second Schedule hereto, TOGETHER WITH the rights and benefits, and all other rights (if any) which, by section 62 of the Law of Property Act, 1925, are deemed to be included in this conveyance, but subject to the reservations mentioned in the principal deed, TO HOLD unto the purchaser in fee simple, SUBJECT to the said restrictions and stipulations, so far as the same are still subsisting and capable of being enforced.

Conveyance.

(2.) The purchaser (by way only of indemnity (*m*)) doth hereby covenant with the vendor that the purchaser and his successors in title, owners and occupiers for the time being of the land hereby conveyed, or any part thereof, henceforth will observe and perform such of the said restrictions and stipulations as for the time being are subsisting and capable of being enforced, and will keep the vendor and his estate and effects indemnified from and against all proceedings, costs, claims and expenses on account of any breach of any such restriction or stipulation. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

Covenant by purchaser to indemnify vendor as to restrictions.

FIRST SCHEDULE—*Restrictions and Stipulations.*

SECOND SCHEDULE—*Description of hereditaments.*

(*m*) See *Reckitt* v. *Cody*, [1920] 2 Ch. 452.

XLIV.

PRECEDENT XLIV. — OF A POLICY OF ASSURANCE.

ASSIGNMENT *of a* POLICY *of* ASSURANCE.

THIS ASSIGNMENT, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part, WITNESSETH, that in consideration of the sum of £——, paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge).

Assignment. Parcels.

1. The vendor, AS BENEFICIAL OWNER, Doth hereby assign unto the purchaser ALL THAT policy of assurance on the life of the vendor granted by the —— Assurance Society, dated the —— day of ——, numbered ——, for the sum of £——, and under the annual premium of ——; AND all money thereby assured or to become payable thereunder, and the full benefit thereof (*n*), TO HOLD unto the purchaser absolutely.

Habendum.

Covenants by vendor not to avoid the policy;

2. The vendor doth hereby covenant with the purchaser, that the vendor will not do or knowingly suffer anything whereby the said policy may be rendered void or voidable, or the purchaser or his personal representatives or assigns may be prevented from receiving the money thereby assured, including any bonus or addition thereto, or any part thereof respectively (*o*); AND THAT, if the vendor shall do or suffer anything whereby any additional premium or payment shall become payable for keeping the said policy in force, then the vendor will, at all times, duly and punctually pay such additional premium or payment, so as to keep the said policy in force. [*Certificate if not over* £500, p. 149.] IN WITNESS, &c. (*p*).

—and to pay additional premiums if incurred.

(*n*) It was formerly considered proper, having regard to the Policies of Assurance Act, 1867, to include in any assignment of a policy an express power to give receipts, so as to bring the assignee within the precise terms of sect. 1 of that Act; but the practice has been discontinued.

(*o*) That this is a proper covenant to be inserted (subject to an arrangement between the parties to the contrary), and generally, as to the law relating to policies of assurance and their assignment, see Dav. Prec. Conv., Vol. II., Pt. I., 4th ed., p. 654 n. (*a*), and Pt. II., 4th ed., pp. 122 *et seq.*

(*p*) Notice of the assignment of the policy should be given to the office by which it is granted. Under the Policies of Assurance Act, 1867, after the giving of such notice the assignee will be entitled to sue in his own name at law for the money assured. See, too, L. P. Act, 1925, sect. 136. By the Stamp Act, 1891, sect. 118, no assignment of a policy of life assurance is to confer on the assignee any right to sue unless the assignment is duly stamped; and no payment is to be made to any person claiming under any such assignment unless duly stamped.

XLV.

Assignment *of* Letters Patent (*q*).

THIS ASSIGNMENT, made, &c., BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS, by Letters Patent, under the seal of the Patent Office, dated ——, and numbered ——, the licence, full power, sole privilege, and authority of making, using, exercising, and vending a certain invention, "for, &c.," within the United Kingdom of Great Britain and Northern Ireland, and Isle of Man, were granted to C. for the term of fourteen [*or* sixteen] years (*r*) on the conditions therein mentioned. AND WHEREAS by an assignment dated, &c., and made between [*parties*], the said C. assigned unto the vendor the said invention, and letters patent, together with all privileges, powers, benefits, and advantages whatsoever to the said invention and letters patent belonging, for the residue of the term granted by the said letters patent [as extended by sect. 6 of the Patents and Designs Act, 1919, as if the term mentioned in the said letters patent had been sixteen years instead of fourteen years (*s*)]. AND WHEREAS the vendor has agreed to sell the said invention and letters patent to the pur-

Recital of grant of letters patent.

Of assignment to the vendor.

Of contract for sale.

(*q*) See, as to the law respecting patents and assignments of patents, notes in Dav. Prec. Conv., Vol. II., Pt. II., 4th ed., pp. 130—136, and 629—642; and the Patents and Designs Acts, 1907 (a consolidating Act) and 1919, and the Patents Rules, 1920. By sect. 8 of the 1919 Act, which is substituted for sect. 29 of the 1907 Act, the right of the Crown to the use of an invention is preserved: see *Re Hale*, [1920] 2 Ch. 377, as to procedure of patentee for compensation, and *Re Carbonit Aetiengesellschaft*, [1923] 2 Ch. 504, as to costs in such cases. As to the rights *inter se* of co-owners of a patent, see *Steers* v. *Rogers*, [1893] A. C. 232; as to the effect of granting a licence, *Heap* v. *Hartley*, 42 Ch. D. 461; *London Printing, &c. Co.* v. *Cox*, [1891] 3 Ch. 291; *Guyot* v. *Thomson*, [1894] 3 Ch. 388; as to a patent granted to two persons and the nature of their interest, *National Society, &c.* v. *Gibbs*, [1900] 2 Ch. 280; as to stamp duty in respect of a licence to use a colonial patent, *Smelting Co. of Australia* v. *I. R. Commrs.*, [1897] 1 Q. B. 175; as to what constitutes infringement, *British Motor Syndicate, Ltd.* v. *Taylor*, [1901] 1 Ch. 122; *Badische, &c.* v. *Hickson*, [1906] A. C. 419 (vending abroad); as to the position of the purchaser under a distress of a patented article, *British Mutoscope, &c. Co.* v. *Homer*, [1901] 1 Ch. 671; as to priority by registration, *New Ixion, &c. Co.* v. *Spilsbury*, [1898] 2 Ch. 484; and as to a vendor's lien for unpaid royalties, *Dansk, &c.* v. *Snell*, [1908] 2 Ch. 127. For other cases, see treatises on the law of patents.

(*r*) The term limiting the duration of patents is now increased from fourteen to sixteen years, and unexpired terms are extended: Patents, &c. Act, 1919, sect. 6. As to the principles on which the Court will, on account of loss or damage owing to the war, grant an extension of the term, see *Re Summers Brown*, [1922] 2 Ch. 759, and later cases.

(*s*) The words in brackets will only be required where the patent was granted prior to the commencement of the 1919 Act and had not expired at that date (see sects. 6 and 22.)

PRECEDENT XLV.

OF LETTERS PATENT.

chaser at the price of £——. NOW THIS DEED WITNESSETH, that in consideration of the sum of £——, paid by the purchaser to the vendor (the receipt whereof the vendor doth hereby acknowledge).

Assignment.

Parcels.

1. The vendor, AS BENEFICIAL OWNER, doth hereby assign unto the purchaser ALL THAT the said invention and letters patent and the full and exclusive benefit and advantage thereof respectively, and of any and every extension (*t*) of the said letters patent, AND ALL rights, powers, and benefits appertaining thereto, TO HOLD unto the purchaser, for his own benefit.

General words.

Covenant by vendor that letters patent are valid.

2. The vendor (by way of extension of the covenant implied by law by his assigning and being expressed to assign as beneficial owner) doth hereby covenant with the purchaser that the said letters patent are valid, and in no wise avoided or avoidable (*u*). [*Certificate if not over* £500, p. 149.] IN WITNESS, &c.

(*t*) See *Re Henderson*, [1901] A. C. 616; *Re Davidson*, [1921] 1 Ch. 69; *Re Société, &c. Patent*, [1922] 1 Ch. 258.

(*u*) This covenant is not implied under sect. 76 of the L. P. Act, 1925. The deed must be registered pursuant to sect. 28 of the Patents, &c. Act, 1907.

The following further covenant may be entered into where the patentee is the assignor, and some covenant of the sort is believed to be in that case usual:—

Covenant to make over the benefit of all future inventions by the patentee with respect to the same or similar matters.

"AND FURTHER that if the patentee shall at any time hereafter discover or invent, or otherwise become possessed of any discovery or invention for any improvements in or additions to the said invention hereby assigned, or shall discover or invent, or otherwise become possessed of any discovery or invention for any process for the preparation or improvements in the preparation of ——, or of any —— of a similar nature or possessing the like properties or qualities of —— as the —— in respect whereof the said patent has been granted, or shall obtain any provisional protection for any such discovery or invention, or shall obtain any other British patent for the said invention hereby assigned, or any British patent or patents for any such other discovery or invention as aforesaid, he will forthwith give notice in writing of every such discovery or invention, or of the obtaining of any such provisional protection or patent or patents as aforesaid, to the assignee, and the assignee shall have the option, to be exercised within three calendar months from the time when such notice shall have been given, or requiring any such discovery or invention to be made known to him in all its details, and the further option to be exercised within three calendar months after the same shall have been made known to him in all its details of requiring the full and exclusive benefit and advantage thereof to be made over to him [on payment by him to the patentee of the sum of £——], and also if any such patent or patents as afore-

said shall have been then obtained, of requiring the same to be assigned to the assignee on payment by him of all expenses incurred in or about the obtaining thereof : AND FURTHER that if in respect of any such discovery or invention no such patent or patents as aforesaid shall have been obtained, the assignee shall have the further option, to be exercised within three calendar months from the time when any such discovery or invention shall have been fully made known to him, of requiring the patentee to apply for provisional protection thereof, upon payment by the assignee of the expenses thereby incurred, and shall also have the option, to be exercised during the term of any such provisional protection to be so applied for, or of which, as having been already obtained by the patentee, notice shall have been given by him to the assignee as aforesaid, of requiring the patentee to obtain a grant of a British patent in respect of any such discovery or invention, and to assign such patent, when so obtained, to the assignee on payment by him of the expenses incurred in the obtaining and assignment of such patent : AND FURTHER that the patentee will in all respects, and without any payment or remuneration whatsoever other than the aforesaid [sum of £——, and] expenses, comply with any such requirements of the assignee, and do all such acts and things (as by signing and leaving a complete specification or otherwise) as may be incident to such requirements, or necessary for properly effectuating the same."

The foregoing form is somewhat lengthy, but it may easily be shortened by omitting altogether those parts which relate to patents to be obtained or granted for the original or any new invention, and so shortened will probably be effectual. It is assumed that the assignor is described in the parties as being afterwards called the patentee, and B. as being afterwards called the assignee. See as to patents of addition sect. 19 of the 1907 Act, as amended by sect. 20 and Schedule of the 1919 Act.

When royalties are reserved there should be covenants on the part of the assignee not only to manufacture the goods and pay the royalties, but also to pay any renewal fees, unless (which is the better plan) those fees are satisfied before the assignment. See *Re Railway and Electric Appliances Co.*, 38 Ch. D. 597

DECLARATIONS.

PRECEDENTS.

I.

PRECEDENT I. — OF CONTRIBUTORY LOAN.

DECLARATION *of* TRUST *of* CONTRIBUTORY LOAN.

THIS DECLARATION, made, &c., BETWEEN A., of, &c., and B., of, &c., of the first part, the said B., of the second part, and C., of, &c., of the third part [*Recital of mortgage of even date to A. and B. in consideration of* £10,000 *paid by A. and B. out of money belonging to them on a joint account*] : AND WHEREAS the said sum of £10,000 in the mortgage expressed to be paid by the said A. and B., was in fact paid as to £5,000, part thereof, by the said A. and B. out of money belonging to them on a joint account (*a*), as to £2,500, further part thereof, by the said B. out of his own money, and as to £2,500, the residue thereof, by the said C.; NOW THIS DEED WITNESSETH, and it is hereby agreed and declared that they, the said A. and B., and the survivor of them, and the personal representatives of such survivor, their or his assigns, or other the trustees or trustee for the time being of these presents (who in their fiduciary capacity are hereinafter referred to as " the trustees ") shall hold the said sum of £10,000 secured by the mortgage, and the interest thereon upon the trusts following (that is to say), As to the sum of £5,000, part of the said principal sum, and the interest for the same, IN TRUST for the said A. and B. and the survivor of them and the personal representatives of such survivor, their or his assigns absolutely; As to the sum of £2,500, further part thereof, and the interest for the same, IN TRUST for the said B., absolutely; And as to the sum of £2,500, the residue thereof, and the interest for the same, IN TRUST for the said C., absolutely : PROVIDED that the said several sums of £5,000, £2,500, and £2,500 and the interest for the same, shall have no preference or priority as between themselves, but shall be payable rateably and on an equal footing one with another out of the money received or realised under or by virtue of the mortgage; PROVIDED ALSO, that if

Recital of mortgage; —that the sum advanced was paid by several persons in specified proportions.

Declaration of trust of the mortgage debt;

—for the lenders in specified proportions.

Proviso that the loans shall rank on equal footing.

Proviso that trustees shall be bound to call in debt upon request.

(*a*) An investment of this description is of course not open to trustees, unless by virtue of an express power to make it. See *Stokes* v. *Prance* [1898] 1 Ch. 212; *Re Dive*, [1909] 1 Ch. 328.

the persons for the time being entitled to the money secured by the mortgage or any of such persons, shall give to the trustees, or leave for them at their usual or last known places or place of abode in England, notice in writing calling in the money for the time being belonging under the trusts of these presents to the persons or person by whom such notice shall be given, then and in such case it shall be obligatory on the trustees immediately, or with all convenient speed, to require payment of such money, and, in case such money shall not be paid within six calendar months after such notice shall be given or left as aforesaid, to enforce by sale, foreclosure, or otherwise, as may be deemed expedient, the security created by the mortgage; PROVIDED ALSO, that the power of appointing a new trustee or new trustees of these presents shall be exercisable by the trustees, jointly with the said B., his personal representatives or assigns, and with the said C., his personal representatives or assigns (*b*). IN WITNESS, &c.

PRECEDENT I. — OF CONTRIBUTORY LOAN.

Power of appointing new trustees.

II.

STATUTORY DECLARATION *as to* IDENTITY AND POSSESSION *of* PARCELS (*c*).

PRECEDENT II. — AS TO IDENTITY OF PARCELS.

I, A., of, &c., [*declarant*], do solemnly and sincerely declare as follows :—

1. I AM —— years of age, and have for a period of —— years

Declaration.

(*b*) A transaction of this kind necessarily involves confidence on the part of the lenders in the persons in whose names the mortgage is taken, and a memorandum as follows will therefore often suffice :—

"BE IT REMEMBERED that the principal sum of £10,000, with interest thereon at the rate of —— per cent. per annum, secured to us, the undersigned A., of, &c., and B., of, &c., by a mortgage [*or* charge by way of legal mortgage] of even date herewith, and made between [*parties*], of divers freehold hereditaments situate at —— in the County of —— [and known as the —— Estate], belongs As to £5,000, part of the said principal sum of £10,000, and the interest thereon, to us, the undersigned A. and B., on a joint account, As to £2,500, further part of the same principal sum, and the interest thereon, to me, the undersigned B., And as to £2,500, the residue of the same principal sum, and the interest thereon, to me, the undersigned C., of, &c. AS WITNESS, &c."

Memorandum of ownership of contributory loan.

Such a declaration is not an assignment or transfer, but creates or affirms the relation of trustee and beneficiary, and does not need to be perfected by notice : see *Hill* v. *Peters*, [1918] 2 Ch. 273. The declaration, to be binding, should be communicated to someone : see *Re Cozens*, [1913] 2 Ch. 478

(*c*) As to statutory declarations relating to identity of parcels, see Dart,

PRECEDENT II.

AS TO IDENTITY OF PARCELS.

last past, resided in the neighbourhood of ——, and have for upwards of —— years past been well acquainted with [an estate, known as ——, situate in the Parish of —— aforesaid, and which includes] the several parcels of land delineated on the Plan now produced to me, marked A., and thereon coloured —— [*or* described in the Schedule hereto], and which land is the property now agreed to be sold by B., of, &c., to C., of, &c.

As to declarant's knowledge of the property to be sold.

As to the identity of the property.

2. I VERILY believe, and have no doubt, that the said property is [part of] the land comprised in and conveyed to W. Z., of, &c., by a Conveyance dated the —— day of ——, and made between [*parties*], according to the description thereof in the said conveyance, which I have carefully read previously to making this declaration.

As to the possession and receipt of rents of the property

3. DURING the time I have known the said property, it has belonged to or been in the possession of L. M., N. O., and P. Q. successively, namely, of the said L. M., from the year —— to the year —— [*and so on*]. And such respective persons have during such respective periods, as I verily believe, been in the free and uninterrupted possession and enjoyment, or receipt of the rents and profits of such property. AND I MAKE this declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835 (*d*).

Declared at, &c., this —— day of ——, before me [*Commissioner for Oaths.*] } *Signature of Declarant.*

III.

STATUTORY DECLARATION *as to* PEDIGREE (*e*).

PRECEDENT III.

AS TO PEDIGREE.

I, L. B., of ——, spinster, do solemnly and sincerely declare as follows :—

Declaration; —as to marriage of declarant's parents;

1. I AM —— years of age, and am one of the children of the late A. B., of ——, by B. B., his wife, formerly, B. K., spinster, who as I have been informed and believe, were married

V. & P., (1905) 162, and Dav. Prec. Conv., Vol. I., 5th ed., p. 463. And as to verification of declarations made abroad, see Commissioners for Oaths Acts, 1889, sects. 3, 6, 11, and 1891, sect. 2.

As to the penalties for making a false statutory declaration, see Perjury Act, 1911, sect. 5.

(*d*) Add Schedule with description of land if a Schedule is referred to.

(*e*) As to statutory declarations relating to matters of pedigree, see Dart, V. & P. (1905), p. 386, &c., and see note to preceding Precedent. The strict evidence of death is a certificate of burial, but a certificate of death is generally received as evidence (see Wms. V. & P. (1922) p. 140, &c.). That certificates under the Births and Deaths Registration Act, 1836, of the birth,

PRECEDENT III.

AS TO PEDIGREE.

in the parish church of ——, on the —— day of ——. The said A. B. and B. B. are the persons respectively referred to in the marriage certificate produced to me at the time of making this declaration, and marked ——.

—as to children of marriage;

2. I HAVE always understood and believe that the said A. B. had three children and no more by the said B. B., namely, two sons, named respectively D. B. and E. B., and one daughter, being myself.

—that one of such children is believed to have died a bachelor and intestate;

3. THE SAID D. B. was, as I have always understood, born at ——, in the kingdom of Italy, on the —— day of ——. In the year 18—, he sailed for Australia, in the ship ——, from Liverpool, since which time no tidings of him have ever been received by any of his family, and I verily believe him to be dead, and that he died a bachelor and intestate.

—as to marriage and death of another of such children;

4. I HAVE been informed and believe that the said E. B. was born at ——, on the —— day of ——. He was married only once, namely, to F. B., formerly F. M., spinster, with whom he intermarried on the —— day of ——, at the parish church of ——, as I know from having been present at the marriage. The said E. B. lived at —— between the years —— and —— and at —— from some time in the year —— until his death, which occurred on the —— day of ——. The said E. B. is the person of that name mentioned in the three several certificates of birth, marriage, and burial [death] now produced to me, and marked ——, ——, and —— respectively. The said F. B. is still living, and resides at ——.

—as to failure of issue of last-mentioned marriage;

5. THERE was issue of the marriage of the said E. B. and F. B. one child only, named G. B., who was born on the —— day of ——, and died on the —— day of ——, an infant, and without having been married. The said G. B. is the person of that name mentioned in the certificates of birth and burial [death] now produced and shown to me and marked with the letters —— and —— respectively. AND I MAKE &c. [*as in preceding Precedent*].

---

death, or marriage of any person are primary evidence of the facts and date of each such event, see *Brierley* v. *Brierley*, [1918] P. 257; *Best* v. *Best* [1920] P. 75.

IV.

PRECEDENT IV.

BY ATTORNEY OF INDIVIDUAL THAT POWER NOT REVOKED.

STATUTORY DECLARATION *by* ATTORNEY *that the* POWER *is* NOT REVOKED (*f*).

I, A., of, &c., do solemnly and sincerely declare as follows :—

1. I am the attorney of B., of, &c., and was so appointed under a Power of Attorney dated the —— day of —— under the hand and seal of the said B.

2. I have not received any notice or information of the revocation of the said Power of Attorney by death or otherwise. AND I MAKE, &C. [*as in Precedent II.*].

V.

PRECEDENT V.

BY OFFICER OF CORPORATION ATTORNEY THAT POWER NOT REVOKED.

STATUTORY DECLARATION *by Officer of* CORPORATION AGGREGATE *appointed to act in execution of* POWER GIVEN TO CORPORATION *that the* POWER *is* NOT REVOKED (*g*).

I, A., of, &c., do solemnly and sincerely declare as follows :—

1. By a Power of Attorney dated the —— day of —— the [*corporation*] was appointed the attorney of B., of, &c., to convey, in his name and on his behalf, all his estate and interest in —— [*or as the case may be*], and for that purpose to execute in his name any deed or other instrument.

2. I am the Clerk to [Secretary of] the said [*corporation*], and at a meeting [of the board of directors] of the said [*corporation*], at which I was present, by a resolution of the said [*board or corporation*] I was appointed the officer to act for the said [*corporation*] in the execution of the said Power of Attorney.

3. I have not received any notice or information of the revocation of the said Power of Attorney by death or otherwise. AND I MAKE, &C. [*as in Precedent II.*].

(*f*) This Declaration is made under the provisions of sect. 124 of the L. P. Act, 1925, set out under POWERS OF ATTORNEY, General Remarks. Note that by the above section this declaration must be made immediately before or within three months after any payment or act made in pursuance of the power.

(*g*) See note to preceding Precedent and L. P. Act, 1925, sect. 74, subsect. (4), set out under POWERS OF ATTORNEY, General Remarks. Note that the officer may be so appointed by "the board of directors, council, or other governing body."

VI.

Precedent VI. — Declaration as to trustees of settled land.

Declaration *supplemental to* **Principal Vesting Deed** *that persons named are* **Trustees** *of the* **Settlement** *for the purposes of the Settled Land Act*, 1925 (*h*).

THIS DECLARATION, made the —— day of ——, **between** A., of, &c. [*person nominated by principal vesting instrument to appoint new trustees*], of the one part, and B., of, &c., and C., of, &c. [*original trustees*], and D., of &c. [*new trustee*], of the other part. **Being supplemental** to a Principal Vesting Deed dated, &c., and made between the said A., of the first part, E. [*intended wife of A.*], of the second part, and the said B. and C. and F. [*a deceased original trustee*], of the third part. **Witnesseth**, and it is hereby declared, that the said B., C. and D. are the trustees for the time being of the settlement for the purposes of the Settled Land Act, 1925. **In witness**, &c.

VII.

Precedent VII. — By mortgagee converting mortgage in fee simple into charge by way of legal mortgage.

Declaration (*by Indorsement on the Mortgage*) *by* **Mortgagee Converting** *existing* **Mortgage** *in* **Fee Simple** into **Charge** *by way of* **Legal Mortgage** (*i*).

I, the within-named [*mortgagee*], Do hereby declare that, in exercise of the statutory power in that behalf, I convert the within-written mortgage into a charge by way of legal mortgage. As witness my hand this —— day of ——.

Witness. *Signature of Mortgagee.*

Memorandum as to trustees of settlement.

(*h*) See S. L. Act, 1925, sect. 35, which requires this declaration on any appointment of a new trustee or on a discharge of an existing trustee of the trust instrument. A memorandum is to be endorsed on or annexed to the last or only principal vesting instrument "in accordance with the Trustee Act, 1925" (sub-sect. (1)); see T. Act, 1925, sect. 35, which section and sect. 35 of the S. L. Act, 1925, are set out under Appointments of Trustees, General Remarks. The following is a suggested form of the memorandum:—

"**Memorandum.**—By a Deed of Declaration dated, &c., and made, &c., it was declared that the said B. and C. and D., of, &c., were the trustees for the time being of the settlement for the purposes of the Settled Land Act, 1925."

(*i*) See sect. 87, sub-sect. (2) of the L. P. Act, 1925. The mortgage in this case is supposed to be a first mortgage in fee simple made before 1926, which on the 1st January, 1926, became converted into a mortgage by demise under the L. P. Act. 1925, 1st Sched. Pt. VII. The above precedent may also be adapted to a mortgage by assignment of leaseholds, made before 1926. As to the power of a mortgagee who has acquired title by limitation to declare, in the case of freeholds, that the fee simple is vested in him, or, in the case of leaseholds, that the leasehold reversion shall vest in him, see sect. 88, sub-sect. (3), and sect. 89, sub-sect. (3). Sects. 87, 88 and 89 are set out under Mortgages, General Remarks.

DISCLAIMER.

General Remarks.

Disclaimer generally:

A disclaimer is the renunciation of an office, estate or power before it has been accepted, and so is distinguishable from a release. The right of disclaimer is founded on the principle that a man cannot have an estate put into him in spite of his teeth : see *per* Abbott, C.J., in *Townson* v. *Tickell* (1819), 3 Barn. & Ald. 31, 37. Thus a man cannot be forced to be a trustee, but if he disclaims the office, he thereby disclaims the estate : see *Re Birchall* (1889), 40 Ch. D. 436; but he cannot disclaim as to part only : see *Re Lord and Fullerton*, [1896] 1 Ch. 228. As to the effect of a disclaimer by a sole trustee under a voluntary settlement, see *Mallott* v. *Wilson*, [1903] 2 Ch. 499. As to beneficial gifts, however, if they are distinct, the beneficiary may disclaim one which is onerous but accept another, but if included in the same gift, as an aggregate whole, then, unless a contrary intention is expressed, the beneficiary must accept or disclaim the whole : see Jarman on Wills (1910), p. 557, and cases cited, also *Re Lyons* (1912), 107 L. T. 146; 56 S. J. 705. Still more reasonably, it would seem, can a devisee or legatee disclaim the office of trustee and a trust estate or interest, and yet accept a beneficial gift by the same will (see Precedent II., *post*). Any power, whether coupled with an interest or not, may be disclaimed by deed : see L. P. Act, 1925, sect. 156. As to how far a disclaimer can be implied, see *Re Clout & Frewer*, [1924] 2 Ch. 230; or retracted, see *Re Young, Fraser* v. *Young*, [1913] 1 Ch. 272. And as to the former law, see Dav. Prec. Conv., 3rd ed., Vol. V., Pt. II., pp. 616 *et seq.*

—of trusts.

—of beneficial gifts.

—by trustee in bankruptcy.

Under the Bankruptcy Act, 1914, sect. 54, the trustee may within a limited time disclaim any onerous property of the bankrupt, and the disclaimer will operate to determine, as from its date, the rights, interests, and liabilities of the bankrupt, and the personal liability of the trustee in the property disclaimed. As to the liability for rates of a trustee occupying the bankrupt's house, see *Re Lister*, [1925] W. N. 193; reversed by C. A., November 30, 1925. The trustee is not entitled to disclaim a lease without the leave of the Court, except in the cases mentioned in Rule 276 of the Bankruptcy Rules, 1915. The Court has power to make an order vesting the disclaimed property

in any person entitled thereto, subject to the same liabilities and obligations as if the lease had been assigned to him at the date of the bankruptcy (see *Re Carter and Ellis*, [1905] 1 K. B. 735; *Ex parte Ashworth, re Holmes*, [1908] 2 K. B 812). Any person injured by the operation of such a disclaimer is to be deemed a creditor of the bankrupt to the extent of the injury.

Disclaimer by married woman.

As to disclaimers by married woman, sect. 168 of the L. P. Act, 1925 (which replaces, with additions, sect. 7 of the R. P. Act, 1845) enacts as follows :—

> **168.**—(1) A married woman has power by deed to disclaim any estate or interest in land with or without the concurrence of her husband as the case may require.
>
> (2) A husband is not a necessary party to any disclaimer by his wife where—
>
> (a) the wife, if there were no disclaimer, would have been entitled to the property for her separate use or as her separate property; or
>
> (b) the property consists of a trust estate.

The words in sub-sect. (1), " with or without the concurrence, &c.," refer to sect. 167 as to dispositions (including disclaimers) by married women of real or personal property or any interest therein, and, while abolishing acknowledgments, do not render unnecessary the concurrence of the husband where such concurrence was required under the Fines and Recoveries Act, 1833 (see sect. 77), or the Married Women's Reversionary Interests Act, 1857; but sect. 167 does not render necessary the concurrence of a husband where such concurrence would not have been requisite if the section had not been passed.

The provision in sub-sect. (2) (b) above is supplemented by sub-sect. (2) of sect. 170, which enables a married woman, without her husband, to dispose of any property held by her as trustee or personal representative, as if she were a *feme sole*. Note " dispose of " includes " disclaim " (see sect. 205 (1) (ii)).

In *Re Wimperis*, [1914] 1 Ch. 502, it was held that a married woman may by virtue of the M. W. P. Act, 1882, s. 1, disclaim a bequest to her of an annuity notwithstanding that she is restrained from anticipation.

PRECEDENTS.

I.

DISCLAIMER *of Trusteeship by one Trustee.*

PRECEDENT I. BY ONE TRUSTEE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A., of, &c., sends greeting. WHEREAS B., late of ——, deceased, by his Will dated, &c., after appointing X. and Y. the executors thereof, devised and bequeathed his freehold and leasehold here-

Recital of

PRECEDENT I.

BY ONE TRUSTEE.

ditaments, situate at ——, in the County of ——, to the said A., jointly with other persons, upon certain trusts thereby declared; AND WHEREAS the said B. died on the —— day of ——, without having revoked or altered his said Will; AND WHEREAS the said A. has not accepted, or consented to accept, any of the devises or bequests purported to be made to him as aforesaid, and has in no manner interfered or intermeddled with the real or personal estate of the said B. NOW THESE PRESENTS WITNESS, that he the said A. has disclaimed, and Doth hereby disclaim, ALL the said freehold and leasehold hereditaments so devised and bequeathed as aforesaid, AND ALL other (if any) the real and personal estate of the testator devised or bequeathed to him in trust, AND all trusts and powers purported by the said Will to be reposed and vested in the said A. (*a*), AND the office of trustee of the said Will. IN WITNESS, &c.

will appointing trustee.

Of testator's death.

That trustee has not accepted the trusts.

Disclaimer.

II.

PRECEDENT II.

BY TWO TRUSTEES, EXECUTORS, AND GUARDIANS.

DISCLAIMER *by two persons of Trusteeship, Executorship,* [*and Guardianship* (*b*)].

TO ALL TO WHOM THESE PRESENTS SHALL COME, A., of, &c., and B., of, &c., send greeting. WHEREAS X., late of ——, deceased, who died on the —— day of ——, by his Will, dated ——, and a Codicil thereto, dated ——, appointed his son-in-law, the said A., the said B., and his the said testator's son C., trustees and executors of his said Will and Codicil [and guardians (jointly with his the said testator's wife) of his infant children], and devised and bequeathed his real and personal estate not thereby specifically disposed of to the said A., B., and C., upon the trusts thereby declared concerning the same; AND WHEREAS the said Will and Codicil have not yet been proved, and neither the said A. nor the said B. has in anywise administered, or intermeddled with, the real or personal estate of the said testator, or acted or interfered in the execution of the trusts or powers of the said Will and Codicil [or as guardians of any of the children of the said testator], and the said A. and B.

Recital of effect of will and codicil.

That disclaiming trustees have not intermeddled with testator's estate; and decline to act as executors.

(*a*) If denied, add: "And all devises, bequests and benefits made or given to him by the said Will." For a form expressly excepting beneficial gifts, see next Precedent.

(*b*) As to the right of either parent to appoint a guardian to act jointly with the surviving parent, and, in case of the refusal of such appointed guardian to act, as to the power of the Court to appoint a guardian, see Guardianship of Infants Act, 1925.

PRECEDENT II.

BY TWO TRUSTEES, EXECUTORS, AND GUARDIANS.

have declined to administer the estate of the said testator, or to act in the execution of the trusts or powers of the said Will and Codicil [or as guardians of the said children]. NOW THESE PRESENTS WITNESS, that they the said A. and B. have disclaimed, and Do and each of them Doth hereby disclaim, ALL the real and personal estate, whatsoever and wheresoever, by the said Will and Codicil devised or bequeathed to them, whether jointly with the said C. or otherwise, in trust as aforesaid; AND all trusts and powers purported by the said Will and Codicil or either of them to be reposed or vested in the said A. and B., or either of them, whether jointly with the said C. or otherwise: AND the offices of trustees and executors of the said Will and Codicil [and guardians of the infant children of the said X.]. PROVIDED ALWAYS, and the said A. doth hereby declare that nothing hereinbefore contained shall operate as a disclaimer on his part of any legacy, estate or interest by the said Will bequeathed or given to him, or to which he is or may become entitled thereunder for his own benefit. IN WITNESS, &c. (*c*).

Disclaimer.

Disclaimer not to affect beneficial interests of one.

(*c*) The trustees should renounce probate of the will in the form required by the Probate Division. As to the effect of such a renunciation not associated with a formal disclaimer of the trusts, see *Re Gordon* (1877), 6 Ch. D. 531. In *Re Toscani*, [1912] P. 1, a grant of administration with the will annexed was made to an executor notwithstanding that he had renounced probate.

As to the power to disclaim onerous property and yet accept a beneficial gift bestowed by the same instrument, see General Remarks, above.

DISENTAILING DEEDS.

General Remarks.

Creation of entailed interests in real and personal property.

The law as to the nature of estates tail subsisting on January 1, 1926, and as to the creation of entailed interests after 1925, may be shortly summarised as follows :—(1) Estates tail can no longer exist as legal estates, but as equitable interests only; (2) Interests in tail, in tail male, or in tail female, or in tail special are now termed "entailed interests"; (3) Personal property may be entailed; (4) An entailed interest can only be created by the like expressions as, before 1926, a similar estate tail could have been created in freehold land, *e.g.*, by such technical expressions as "in tail," "heirs of the body," &c. Except that a direction to hold personal estate upon trusts corresponding to trusts affecting land held for an entailed interest, is sufficient to create an entailed interest in such personal estate.

As to the effect of the changes in the law as regards the Rules in *Shelley's* and *Wild's Cases*, see Wills, General Remarks.

These important provisions are contained in sect. 130 of the L. P. Act, 1925, which is as follows :—

L. P. Act, 1925, s. 130.

130.—(1) An interest in tail or in tail male or in tail female or in tail special (in this Act referred to as "an entailed interest") may be created by way of trust in any property, real or personal, but only by the like expressions as those by which before the commencement of this Act a similar estate tail could have been created by deed (not being an executory instrument) in freehold land, and with the like results, including the right to bar the entail either absolutely or so as to create an interest equivalent to a base fee, and accordingly all statutory provisions relating to estates tail in real property shall apply to entailed interests in personal property.

Personal estate so entailed (not being chattels settled as heirlooms) may be invested, applied, and otherwise dealt with as if the same were capital money or securities representing capital money arising under the Settled Land Act, 1925, from land settled on the like trusts.

(2) Expressions contained in an instrument coming into operation after the commencement of this Act, which, in a will, or executory instrument coming into operation before such commencement, would have created an entailed interest in freehold land, but would not have been effectual for that purpose in a deed not being an executory instrument, shall (save as provided by the next succeeding section) operate in equity, in regard to property real or personal, to create

absolute, fee simple or other interests corresponding to those which, if the property affected had been personal estate, would have been created therein by similar expressions before the commencement of this Act.

(3) Where personal estate (including the proceeds of sale of land directed to be sold and chattels directed to be held as heirlooms) is, after the commencement of this Act, directed to be enjoyed or held with, or upon trusts corresponding to trusts affecting, land in which, either before or after the commencement of this Act an entailed interest has been created, and is subsisting, such direction shall be deemed sufficient to create a corresponding entailed interest in such personal estate.

(4) In default of and subject to the execution of a disentailing assurance or the exercise of the testamentary power conferred by this Act, an entailed interest (to the extent of the property affected) shall devolve as an equitable interest, from time to time, upon the persons who would have been successively entitled thereto as the heirs of the body (either generally or of a particular class) of the tenant in tail or other person, or as tenant by the curtesy, if the entailed interest had, before the commencement of this Act, been limited in respect of freehold land governed by the general law in force immediately before such commencement, and such law had remained unaffected.

(5) Where personal chattels are settled without reference to settled land on trusts creating entailed interests therein, the trustees, with the consent of the usufructuary for the time being if of full age, may sell the chattels or any of them, and the net proceeds of any such sale shall be held in trust for and shall go to the same persons successively, in the same manner and for the same interests, as the chattels sold would have been held and gone if they had not been sold, and the income of investments representing such proceeds of sale shall be applied accordingly.

(6) An entailed interest shall only be capable of being created by a settlement of real or personal property or the proceeds of sale thereof (including the will of a person dying after the commencement of this Act), or by an agreement for a settlement in which the trusts to affect the property are sufficiently declared.

(7) In this Act where the context so admits "entailed interest" includes an estate tail (now made to take effect as an equitable interest) created before the commencement of this Act.

Enrolment of certain assurances now unnecessary.

By sect. 133 of the L. P. Act, 1925, the following assurances, of which by the Fines and Recoveries Act enrolment was required, are now as effectual without enrolment. The sections of the F. and R. Act, 1833, so affected refer to the following cases :— *i.e.*, sect. 41 (any "disposition" by a tenant in tail, except certain leases); sect. 46 (the consent of a protector to the disposition of a tenant in tail if given by a separate deed); sect. 58 (the consent of the protector in case of bankruptcy); sect. 59 (a disposition by the trustee in bankruptcy of a tenant in tail); sect. 71 (a disposition of money arising from the sale of land liable to be invested in the purchase of land to be entailed); and sect. 72 (as to land in Ireland).

In future, therefore, neither disentailing assurances by a tenant in tail nor the consent of a protector by separate deed need be enrolled.

Sect. 133 includes a vesting order operating as a disentailing assurance, whether made for barring an estate tail or enlarging a base fee, and applies not only to entailed interests created after 1925, but to estates tail created before 1926.

Acknowledgments by married women abolished.

Any disposition by a married woman which, under the F. and R. Act, 1833, she was authorised to make by deed acknowledged can now be made by her, with the concurrence of her husband, without acknowledgment, and her separate examination is unnecessary : see L. P. Act, 1925, sect. 167.

Power of tenant in tail to dispose by will of fee simple.

In addition to the right which the owner of an entailed interest has to bar the entail, power is now conferred upon a person of full age who at his death is tenant in tail in possession to dispose by will of all property to which, at his death, he is so entitled, as if he had been tenant in fee simple or absolute owner thereof : see L. P. Act, sect. 176, set out under WILLS, General Remarks.

Disentailing deeds, generally.

As to disentailing assurances generally, see notes to Dav. Prec. Conv., 3rd ed., Vol. III., pp. 1284—1315; Vaizey on Settlements (1887), pp. 1587—1636. See also *Meeking* v. *Meeking*, [1917] 1 Ch. 77, as to rectifying a disentailing assurance on the ground of mistake; *Bankes* v. *Small* (1887), 36 Ch. D. 716, where specific performance was enforced of a covenant to disentail; *Cardigan* v. *Curzon-Howe*, [1901] 2 Ch. 479, as to the far-reaching extent of the bar; *Blake* v. *Blake*, [1913] 1 I. R. 343, as to the effect of a disentail and resettlement, where a tenant in tail in remainder had covenanted in marriage articles to convey to trustees such estate as he could convey upon trusts for wife and issue; *Re Gaskell and Walter*, [1906] 1 Ch. 1, as to disentail of property of a convict, and *Re E. D. S.*, [1914] 1 Ch. 618, of property of a lunatic.

PRECEDENTS.

I.

PRECEDENT I.

BY TENANT IN TAIL IN POSSESSION.

DEED *without Recitals by* TENANT *in* TAIL *in* POSSESSION *to* BAR *the* ENTAIL *of* FREEHOLDS.

THIS DISENTAILING DEED made, &c., BETWEEN A., of, &c. [*tenant in tail*], of the one part, and X., of, &c. [*trustee*], of the other part, WITNESSETH that for barring the entail of all hereditaments whereof he is tenant in tail male or in tail and for vesting the same in himself in fee simple, the said A. DOTH HEREBY convey and dispose of unto the said X., ALL the freehold manors,

Conveyance to himself free from entail.

messuages, land and hereditaments in the Parish of ——, in the County of ——, or any Parish or place thereto adjoining or elsewhere, to which the said A. is now entailed, for any estate or interest in tail male or in tail, TO HOLD unto the said X. in fee simple DISCHARGED from all estates or interests in tail male or in tail now vested in the said A., and all estates, rights, interests and powers, to take effect after the determination or in defeasance of such estates or interests in tail male or in tail. IN TRUST for the said A. in fee simple. IN WITNESS, &c. (*a*).

PRECEDENT I. BY TENANT IN TAIL IN POSSESSION.

II.

DEED *by* TENANT *in* TAIL *in* REMAINDER *with the Consent of the* PROTECTOR, *to* BAR *the* ENTAIL *of* FREEHOLDS, *and* CAPITAL MONEY. VARIATIONS *where* LIFE INTEREST *of* PROTECTOR *is conveyed, and a* JOINT POWER *of* APPOINTMENT *is* LIMITED.

PRECEDENT. II. BY TENANT IN TAIL IN REMAINDER WITH CONSENT OF PROTECTOR

THIS DISENTAILING DEED, made, &c., BETWEEN C. B. [*tenant in tail*], of &c. (herein called "the son"), of the first part, and A. B., of, &c. [*protector*] (herein called "the father"), of the second part and X., of &c. (herein called "the trustee"), of the third part. WHEREAS, by a Settlement (herein called "the settlement") dated the —— day of —— [*before* 1926] and made between [*parties*], certain manors, messuages, land, and other freehold hereditaments in the Parishes of —— and ——, in the County of ——, therein described or referred to, were limited to certain uses which have now failed or determined, and after the failure or determination thereof, to the use of the father and his assigns during his life, without impeachment of waste, with remainder to the use of the first and other sons of the father successively according to their respective seniorities in tail with remainders over. AND WHEREAS some of the hereditaments comprised in the settlement have been sold or given in exchange, and the remaining hereditaments and other hereditaments have been taken in exchange or purchased are now by a Vesting Deed dated, &c., vested in the father upon the trusts of the settlement. AND WHEREAS such of the money produced by sale or exchange, as has not been invested in the purchase of hereditaments, is now represented by the sum of £—— Two-and-half per Cent. Con-

Recital of creation of the entail;

—of changes in the estates;

—and investment of sale money;

(*a*) No enrolment is now required: see General Remarks, above. A person may now convey land to or vest land in himself, see L. P. Act, 1925, sect. 72, sub-sect. (3); but see note (*k*) at p. 230.

PRECEDENT 11.

BY TENANT IN TAIL IN REMAINDER WITH CONSENT OF PROTECTOR.

solidated Stock, standing in the names of —— and ——, the present trustees of the settlement. AND WHEREAS the son is the first son of the father, and attained his age of twenty-one years on the —— day of ——, 19— (*b*). NOW THIS DEED WITNESSETH as follows :—

—of the birth and majority of the tenant in tail.

1. (*c*) The son, with the consent of the father as protector of the settlement (testified by his executing these presents), DOTH HEREBY convey and dispose of unto the trustee, ALL the manors, messuages, land, and hereditaments comprised in or assured by or which by any means have become and still are subject to the subsisting trusts of the settlement [EXCEPT such of the said hereditaments comprised in the settlement as have been sold or given in exchange], TO HOLD unto the trustee in fee simple, Subject and without prejudice to the estate or interest for life of the father, and to such of the powers and privileges thereto annexed, or exercisable during the continuance thereof, as are now subsisting or capable of being exercised (*d*), But freed and discharged from all estates or interests in tail male or in tail of the son at law or in equity, and from all estates, rights, interests, and powers, to take effect after the determination or in defeasance of such estates or interests in tail male or in tail (*e*), IN TRUST for the son in fee simple.

Conveyance.

Freehold parcels.

Habendum.

(*b*) This disentailing deed is assumed to be executed after 1925, and the settlement having been made before 1926, to have become subject to the provisions in paragraph 1 of the Second Schedule to the S. L. Act, 1925. It is perhaps unnecessary to refer to the vesting instrument made in accordance with those provisions, but, if thought advisable, it can be recited, as above.

(*c*) If the protector conveys his life interest, as is usual when a resettlement is anticipated, introduce the clause with these words :—

"the father, so far as relates to his life estate or interest, DOTH HEREBY convey and"

(*d*) In the case mentioned in the preceding note the words "Subject, &c.," will be omitted, but it is sometimes necessary to substitute the following words :—

"Subject and without prejudice to the trusts, estates, or interests preceding the estate or interest limited by the settlement to the first son of the father other than the estate or interest for life of the father, and to the powers annexed to such preceding estates or interests, or exercisable during the continuance thereof respectively."

(*e*) In the same case instead of the trust in favour of the son in fee simple, substitute the following words :—

"UPON SUCH TRUSTS and subject to such powers and provisions as the father and the son shall by deed jointly appoint, and in default of and until and subject to such appointment, [UPON SUCH TRUSTS and subject to such powers and provisions as the son, if he shall survive the father, shall, after the death of the father, by Deed or Will or Codicil appoint, and in default of

PRECEDENT II.

BY TENANT IN TAIL IN REMAINDER WITH CONSENT OF PROTECTOR.

2. (*f*) The son with the consent of the father as protector of the settlement (testified as aforesaid), DOTH HEREBY assign and dispose of, UNTO the trustee, ALL THAT the said sum of £—— Two-and-a-half per Cent. Consolidated Stock and all other, if any, the money, stocks, funds, and securities, which, or the money to arise from the sale or conversion whereof, are now applicable to the purchase of lands to be settled upon the subsisting trusts of the settlement. TO HOLD unto the trustee (*g*), Subject and without prejudice to such estate or interest for life, powers, and privileges as aforesaid, But freed and discharged from all estates or interests in tail male or in tail of the son at law or in equity, and from all estates, rights, interests and powers, to take effect after the determination or in defeasance of such estates or interests in tail male or in tail, IN TRUST for the son absolutely, as personal estate (*h*). IN WITNESS, &c.

Assignment of funds.

Habendum.

III.

PROTECTOR'S CONSENT *to the* BARRING *of an* ENTAILED INTEREST (*i*).

PRECEDENT III.

PROTECTOR'S CONSENT.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., [*protector*], sends greeting this —— day of

---

and until and subject to such appointment,] UPON THE TRUSTS and subject to the powers and provisions which, by virtue of the settlement, were subsisting or capable of taking effect therein immediately before the execution of these presents so as to restore and confirm the same trusts, powers and provisions." As to the effect of restoring the life interest, see S. L. Act, 1925, sect. 22.

(*f*) In the same case insert here :—

"The father so far as relates to his life interest Doth hereby assign and the son, &c."

(*g*) That words of limitation were unnecessary under the Fines and Recoveries Act, 1833, see *Re Monckton*, [1913] 2 Ch. 636; *Re Nutt*, [1915] 2 Ch. 431; *Re Dickson*, [1921] 2 Ch. 108.

(*h*) See p. 230, note (*k*), and as to the importance of adding the word "as personal estate," if such is the intention, see *Re Dickson*, [1921] 2 Ch. 108.

In the alternative case above mentioned, substitute for the words "In trust for the son, &c.," the words following :— "UPON SUCH TRUSTS [*&c., as in note* (*e*) *above.*"

For a form of re-settlement by tenant for life and remainderman under a joint power created by a disentailing assurance by which the protector has conveyed his life estate, see under SETTLEMENTS.

It has been held that the consent of the protector was effectually given though the tenant in tail died before the execution of the deed by the protector : *Whitmore-Searle* v. *Whitmore-Searle*, [1907] 2 Ch. 332.

(*i*) As to such deeds, see Sugd. V. & P. (1862), 468; Dart, V. & P. (1905), 708 *et seq.* See, too, *Re Jenkins*, [1917] 1 Ch. 46 (that trustees of a term

PRECEDENT III.

PROTECTOR'S CONSENT.

——. WHEREAS by virtue of the Will, dated the —— day of ——, of C. B., who died on the —— day of —— [*after* 1925], and whose said Will was proved in the —— Registry by E. and F. the executors therein named, divers manors, messuages, farms, land, and other hereditaments were limited to the said A. B., and his assigns for life, without impeachment of waste, with remainder to the use of the first son of the said A. B., in tail with remainders over. AND WHEREAS, by an Assent in writing [by Deed] dated, &c., the said E. and F., as personal representatives of the said C. B. assented to the said devise and to the vesting of the said hereditaments in the said A. B. in fee simple, upon the trusts of the said Will. AND WHEREAS D. B. is the first son of the said A. B., and has attained the age of twenty-one years. NOW THESE PRESENTS WITNESS, that the said A. B., as protector of the settlement, Doth hereby consent to every or any other disposition which the said D. B. shall make of the said hereditaments devised by or subject to the subsisting trusts of the said Will, or of any of them, or of any part thereof. IN WITNESS, &c. (*k*).

Recital of state of the title.

That first son has attained twenty-one.

Witnesseth protector's consent to disposition by tenant in tail.

---

to secure a prior rentcharge were not protectors within sect. 22 of the Fines and Recoveries Act, 1833, and that a trustee without beneficial interest, whether or not he has duties to perform, is a "bare trustee" under sect. 27 of that Act); *Cohen* v. *Bayley-Worthington*, [1908] A. C. 97 (as to the survivorship of the office); and *Re Wilmer*, [1910] 2 Ch. 111 (where the tenant in tail was himself the protector).

This deed must be executed on or before the day of the execution of the disentailing assurance; see Fines and Recoveries Act, 1833, sect. 42; but enrolment, as required by sect. 46 of that Act, is now unnecessary: L. P. Act, 1925, sect. 133.

(*k*) This and the preceding Precedents affect the equitable interests only, and are made behind the vesting deed. Notice in writing should be given to the trustees of the Settlement. See L. P. Act, 1925, sect. 137, and Wolstenholme & Cherry, &c., Stats. (1925), vol. i., pp. 359., &c.

As to the interposition of a grantee in disentailing assurances, see Wolstenholme, &c. (above), p. 247.

ENLARGEMENT OF LONG TERMS.

General Remarks.

Enlargement of long terms into fee simple estates.

The enlargement of long terms under the provisions of sect. 65 of the C. Act, 1881, as amended by sect. 11 of the C. Act, 1882, was a species of enfranchisement authorised by statute whereby certain chattels real could be converted into freehold. These provisions are now replaced, with additions, by sect. 153 of the L. P. Act, 1925, which is as follows :—

L. P. Act, 1925, s. 153.

153.—(1) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof,—

(a) without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term; and

(b) without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released or has become barred by lapse of time, or has in any other way ceased to be payable;

the term may be enlarged into a fee simple in the manner, and subject to the restrictions in this section provided.

(2) This section applies to and includes every such term as aforesaid whenever created, whether or not having the freehold as the immediate reversion thereon; but does not apply to—

(i) Any term liable to be determined by re-entry for condition broken; or

(ii) Any term created by subdemise out of a superior term, itself incapable of being enlarged into fee simple.

(3) This section extends to mortgage terms, where the right of redemption is barred.

(4) A rent not exceeding the yearly sum of one pound which has not been collected or paid for a continuous period of twenty years or upwards shall, for the purposes of this section, be deemed to have ceased to be payable:

Provided that, of the said period, at least five years must have elapsed after the commencement of this Act.

(5) Where a rent incident to a reversion expectant on a term to which this section applies is deemed to have ceased to be payable for the purposes aforesaid, no claim for such rent or for any arrears thereof shall be capable of being enforced.

(6) Each of the following persons, namely—

(i) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of

any land comprised in the term, and, in the case of a married woman without the concurrence of her husband, whether or not she is entitled for her separate use or as her separate property, or is subject to a restraint on anticipation;

(ii) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not;

(iii) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not;

shall, so far as regards the land to which he is entitled, or in which he is interested in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

(7) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(8) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights, and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(9) But where—

(a) any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land, or, in the case of settlements coming into operation before the commencement of this Act, so as to go along with that other land as far as the law permits; and

(b) at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, free from charges or powers of charging created by a settlement;

the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be, conveyed by means of a subsidiary vesting instrument and settled in like manner as the other land, being freehold land aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

(10) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right or in fact, or have not been severed or reserved by an inclosure Act or award.

Origin of long terms.

These long terms were frequent in the Southern and Western Counties, and some other parts of England, and were created mostly between the commencement of the reign of Queen Elizabeth and the end of the eighteenth century. Some of them

were terms created on mortgage by demise where the equity of redemption had become barred by foreclosure or under the Limitation Acts, or terms created and sold to raise portions and other charges—and others, terms apparently created on sales, probably to avoid the trouble and expense of feoffments with livery of seisin, or the two deeds of a lease and release. The older deeds of creation have mostly perished, and the evidences of the deeds are the recitals of, or reference to, them in later existing deeds. Until the abolition of fines by the Fines and Recoveries Act, 1833, and of tortious conveyances by the R. P. Act, 1845, sect. 4, persons possessed of these terms occasionally acquired, or attempted to acquire, the fee simple by the tortious operation of a feoffment and fine, or of a feoffment alone, but the process (where a fine was used) was expensive, and in any case of doubtful efficacy (see Sanders on Uses, 5th ed., Vol. II., pp. 21 *et seq.*), and since the last-mentioned Act had become impossible. The existence of these terms is a source of inconvenience to the proprietors of them, because the lands comprised in them are mostly mixed with freehold lands, and frequently cannot be distinguished, and require to be assigned by separate operative parts of deeds, and may cause confusion in testamentary dispositions, but under the new law of intestacy, the distinction between real and personal estate is not material.

The statutory provisions appear to be generally sufficient to enable persons interested in them to enlarge them into estates in fee simple, and to subject such estates in fee simple (including minerals) to the limitations, trusts, incumbrances, and equities of the terms.

Rent having no money value.

What construction should be put upon the expression "*rent having no money value*" in sub-sect. (1) seems to be still doubtful. But it would seem that the test ought to be, not whether any rent is reserved in money, but whether the rent is such as would have any value to a purchaser, or (in other words) whether the reversion could be sold. (See *Re Chapman and Hobbs* (1885), 29 Ch. D. 1007; *Blaiberg* v. *Keeves*, [1906] 2 Ch. 175).

Enlargement by mortgagee.

The doubt whether a mortgagee, whose mortgage was created out of the fee simple by a demise for a long term, could enlarge the term into a fee simple, even though the right to redemption was barred, is now removed by sub-sect. (3). Even if the doubt was not well founded, it is important that the right should be clearly expressed, having regard to the revival by the new law of this kind of mortgage: see also sect. 88, sub-sect. (3), set out under MORTGAGES, General Remarks.

The effect of sub-sects. (4) and (5) (which are also new) is,

Limitation as to rent not exceeding £1.

at the expiration of the period mentioned, not only to extinguish the rent as if the term had originally been created "without any rent" within sub-sect. (1) (b) for the purpose of enlargement, but to prevent any claim for the rent or for any arrears. These sub-sections appear to be an extension of the law of limitation as enacted by sect. 3 of the Civil Procedure Act, 1833, and sect. 42 of the Real Property Limitation Act, 1833.

Married woman.

A married woman, who is beneficially entitled in right of the term to possession of any land comprised in the term, may now enlarge the term without the concurrence of her husband even though she is not entitled for her separate use or as her separate property: see sub-sect. (6) (i), thus altering the provision in sect. 65, sub-sect. (2) (i) of the C. Act, 1881.

Settled land.

In the case of settled land the estate in fee simple is by sub-sect. (9) to be conveyed by means of a subsidiary vesting instrument, and settled in the same way as the freehold land.

Conversion of personalty into realty.

The effect of the enlargement of long terms into a fee simple is now of less importance so far as it operates as a conversion of personalty into realty, having regard to the new statutory provisions as to the devolution of real estate on intestacy (see A. E. Act, 1925, sect. 33) and the extension of the law of entail to personal property (see L. P. Act, 1925, sect. 130).

PRECEDENTS (*a*).

I.

Precedent I.

BY PERSON ABSOLUTELY ENTITLED FREE FROM INCUMBRANCES.

Deed *of* Enlargement *of a* long term *by a* Person absolutely entitled *free from incumbrances.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, A., of, &c., sends greeting. Whereas the said A. is beneficially entitled, in right of the term hereinafter mentioned, to possession of the hereditaments hereinafter described for the residue [*not less than* 200 *years being unexpired*] of a term of —— [*not less than* 300] years from the —— day of ——, created by a lease dated the —— day of ——, and made between [*parties*], without any trust or right of redemption affecting the term in favour of the freeholder or other person entitled in reversion expectant thereon, and without any rent now subsisting incident to the reversion [*or* "at a peppercorn rent"], and not liable to be determined by re-entry for condition broken. Now in exercise of the power in this behalf given by the Law of Property Act, 1925, and of all other powers, the said A. doth hereby declare

Recital of title to term.

Declaration.

(*a*) See General Remarks above.

PRECEDENT I.

BY PERSON ABSOLUTELY ENTITLED FREE FROM INCUMBRANCES.

that from and after the execution of these presents, the aforesaid term or the residue thereof, as regards the hereditaments specified in the Schedule hereto, and all other hereditaments (if any) to which the said A. is so beneficially entitled as aforesaid, shall be and the same is hereby enlarged into a fee simple, To THE INTENT that the said A. shall acquire an estate in fee simple in the said hereditaments (including mines and minerals), and have the same so vested in him accordingly (*b*). IN WITNESS, &c.

That term be enlarged into fee simple.

SCHEDULE—*Description of hereditaments.*

II.

DEED *of* ENLARGEMENT *of a* LONG TERM *by* MORTGAGOR *with* CONSENT *of* MORTGAGEE (*c*).

PRECEDENT II.

BY MORTGAGOR.

THIS DEED OF ENLARGEMENT, made, &c., BETWEEN A., of &c. [*mortgagor*] (herein called "the owner," which expression where appropriate includes persons entitled to redeem the mortgage hereinafter mentioned), of the one part, and B., of, &c. (herein called "the mortgagee," which expression where appropriate includes persons entitled to the benefit of the mortgage hereinafter mentioned), of the other part. WHEREAS by a Lease (herein called "the lease") dated, &c., and made between [*parties*] ALL THAT [*parcels as in lease*] were demised unto the said [*lessee*] for a term of 1,000 years from the —— day of —— at a peppercorn rent. AND WHEREAS the hereditaments demised by the lease were at the date of the mortgage hereinafter mentioned vested in the owner for the residue of the said term. AND WHEREAS by a Mortgage (herein called "the mortgage") dated, &c. [*before* 1926], and made between the owner, of the one part, and the mortgagee, of the other part, the owner assigned the said hereditaments unto the mortgagee for the residue of the said term by way of mortgage for securing

Recital of demise for long term;

—of vesting of term in owner;

—of mortgage by assignment

(*b*) See L. P. Act, 1925, sect. 153, sub-sect. (7), as to the effect of the enlargement, and sub-sect. (10) as to the inclusion of mines and minerals. Notwithstanding some ambiguity in the use of the word "vested," as distinct from "entitled to possession" or "in receipt of income" (see sub-sect. (6)), it seems clear that here the beneficial owner is "a person in whom the term was previously vested" within sub-sect. (7). The declaration of the intention is perhaps, therefore, superfluous on that ground but may be useful as showing that mines and minerals are included.

(*c*) The enlargement might, it is thought, be made without the consent of the mortgagee, as it appears to be beneficial to him, but it seems advisable that his consent should, if possible, be obtained. If he does consent he should execute the deed.

Consent of mortgagee;

PRECEDENT II.

BY MORTGAGOR.

payment to the mortgagee of the sum of £—— with interest as therein mentioned. AND WHEREAS on the first day of January, 1926, the said hereditaments, by virtue of the Law of Property Act, 1925, became vested in the mortgagee for the residue of the said term less the last ten days thereof, and the term which was assigned by the mortgage became vested in the owner for the whole residue thereof (*d*). AND WHEREAS the residue unexpired of the term so vested in the owner as aforesaid (herein called "the head term") is without any trust or right of redemption affecting the same in favour of the freeholder, and is not liable to be determined by re-entry for condition broken. AND WHEREAS it has been agreed that the owner shall enlarge the head term into an estate in fee simple, but not so as to prejudice the sub-term which is so vested in the mortgagee as aforesaid. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises and in exercise of the power in this behalf given by the Law of Property Act, 1925, and of all other powers, the owner, with the consent of the mortgagee hereby testified, DOTH HEREBY DECLARE that the head term or the residue thereof, as regards the hereditaments comprised in the lease and all other hereditaments (if any) to which his power extends, shall be, and the same is hereby, enlarged into a fee simple, TO THE INTENT that the owner shall acquire an estate in fee simple in the said hereditaments (including mines and minerals), and have the same so vested in him accordingly, but without prejudice to, and so as to keep alive, the sub-term, and not so as to affect the benefit of the security now vested in the mortgagee, but subject to a provision for cesser corresponding with the right of redemption which at the commencement of the Law of Property Act, 1925, was subsisting with respect to the term assigned by the mortgage. IN WITNESS, &c. (*e*).

—of position of parties on Jan. 1, 1926;

—of no right of redemption in freeholder.

—of agreement to enlarge head term;

Enlargement of head term.

Enlargement not to prejudice sub-term.

(*d*) See L. P. Act, 1925, First Schedule, Part VIII., sects. 1, 3.

(*e*) It is thought that the wording of sect. 139 of the L. P. Act. 1925 (compare R. P. Act, 1845, sect. 9) is sufficiently wide to keep the sub-term alive, but if there is ground for doubt as to whether the enlargement effects a merger, the transaction could be carried out in the following order: (1) the mortgagee surrenders the sub-term, (2) the owner enlarges the head term, (3) the owner demises the freehold for an original term of 3,000 years, subject to a proviso for redemption, or charges it by way of legal mortgage.

III.

Deed *of* Enlargement *of a* long term *by* Trustees *for Sale under a Will.*

Precedent III.

By trustees.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A., of, &c., and B., of, &c. [*trustees*] (herein called "the trustees"), send greeting. Whereas by virtue of the Will dated the —— day of —— of X., who died on the —— day of ——, and whose said will was proved on the —— day of —— in the —— Registry by Y. and Z., the executors therein named, and of an Assent in writing dated the —— day of —— under the hands of the said Y. and Z., the trustees, as trustees for sale, are in receipt of the rents and profits of the hereditaments hereinafter described [*continue as in Precedent I. to end of recital*]. Now in exercise of the power in this behalf given by the Law of Property Act, 1925, and of all other powers, the trustees do hereby declare that, from and after the execution of these presents, the aforesaid term, or the residue thereof, as regards the said hereditaments specified in the Schedule hereto, and all other hereditaments (if any) of the rents and profits of which the trustees are in receipt as such trustees as aforesaid in right of the said term, shall be, and the same is hereby enlarged into, a fee simple, to the intent that the trustees shall acquire an estate in fee simple in the said hereditaments (including mines and minerals), and have the same so vested in them as such trustees as aforesaid (*f*). In witness, &c.

Recital of will, death and probate;

—of assent;

—of title to term.

Declaration that term be enlarged into fee simple.

SCHEDULE—*Description of hereditaments.*

IV.

Deed *of* Enlargement *of a* long term *by a* Tenant for Life, *the term being* settled *to go along with* Freeholds *under a* Settlement *existing before* 1926.

Precedent IV.

By tenant for life of term settled by reference to limitations of freeholds.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c. [*tenant for life*], sends greeting. Whereas

(*f*) An enlargement deed by the personal representatives of a deceased person may easily be framed from the above Precedent. Thus, after reciting the will, death and probate continue: "The hereditaments hereinafter described are vested in [*executors*] as personal representatives of the said [*testator*] deceased for the residue" [*&c., as in Precedent I. with necessary variations*]. Or, before reciting the will, the lease and assignment to the testator may be recited, but it is sufficient for the exercise of the power to state that the term is vested in the executors as personal representatives (see L. P. Act, 1925, sect. 153, sub-sect. (6) (iii)).

PRECEDENT IV.

BY TENANT FOR LIFE OF TERM SETTLED BY REFERENCE TO LIMITATIONS OF FREEHOLDS.

W. B., late of ——, in the County of ——, deceased, was, at the date of his death, seised of certain freehold hereditaments situate in the Parish of ——, in the County of ——, for an estate in fee simple in possession, free from incumbrances, and was also possessed of certain leasehold hereditaments situate in the same Parish, which freehold and leasehold hereditaments are described in the First Schedule hereto, and which leasehold hereditaments were held by him at a peppercorn rent for the residue of a term of 1,000 years, created by a lease dated, &c., and made between [*parties*], and are more particularly described in the Second Schedule hereto (*g*). AND WHEREAS the said W. B., by his Will dated [*before* 1926], devised all his freehold hereditaments situate in the aforesaid Parish of —— unto his wife, the said A. B., during her life, without impeachment of waste, with remainders over in settlement, And bequeathed all his leasehold hereditaments situate in the same parish unto X. and Y. (herein called "the trustees") for all the testator's estate, term, and interests therein respectively, UPON trust that the trustees should hold the same upon such trusts, and with and subject to such powers and provisions as should as nearly correspond with the uses, trusts, powers and provisions thereinbefore limited and declared concerning his said freehold hereditaments situate in the same Parish as the different tenure and quality of the premises and the rules of law and equity would permit, but so as not to increase or multiply charges or power of charging, and so that the said leasehold premises should not for the purposes of transmission vest absolutely in any person thereby made tenant in tail male by purchase of the said hereditaments, unless such person should attain the age of twenty-one years, but on his decease under that age should devolve in the same manner as if they had been freehold of inheritance and had been included in the devise thereinbefore contained. AND WHEREAS the said testator died, &c. [*before* 1926], and his said Will was proved in the —— Registry, on the —— day of ——, by the trustees, the executors therein named. AND WHEREAS the ultimate beneficial interest in the said term has not become absolutely and indefeasibly vested in any person. AND WHEREAS by a Principal Vesting Deed dated, &c. [*after* 1925], and made by the trustees, of the one part, and the said A. B., of the other part, the said freehold and leasehold hereditaments were vested in the said A. B., as to the freehold part thereof in fee simple,

Recital that testator was seised in fee simple of freeholds and possessed of leaseholds held for a long term;

—and of his will devising the freeholds in settlement, and bequeathing the leaseholds to trustees upon corresponding trusts.

Of death of testator and proof of his will.

That ultimate beneficial interest has not become absolutely vested.

(*g*) The reason in this case for two Schedules is that the freehold and leasehold properties are intermixed, and the First Schedule contains the present descriptions of both freeholds and leaseholds, and the Second Schedule contains the ancient unquestioned descriptions of the leaseholds. Variations will be required in the case in which there is no intermixture.

PRECEDENT IV.

BY TENANT FOR LIFE OF TERM SETTLED BY REFERENCE TO LIMITATIONS OF FREEHOLDS.

and as to the leasehold part thereof for the residue of the term of years for which the same were held, upon the trusts and subject to the powers and provisions upon and subject to which under the said Will the same ought from time to time to be held. AND WHEREAS the said A. B. is beneficially entitled, in right of the said term, to possession of the hereditaments comprised in the said lease, and there is no trust or right of redemption affecting the said term in favour of any person entitled in reversion expectant thereon, and the said term is not liable to be determined by re-entry for condition broken. Now THESE PRESENTS WITNESS, that in consideration of the premises, and in exercise of the power in this behalf contained in the Law of Property Act, 1925, and of all other powers, the said A. B. DOTH HEREBY DECLARE that the said term, as regards the hereditaments described in the Second Schedule hereto, and now so vested in the said A. B. for the residue of the said term as aforesaid, shall, from and after the execution of these presents, by the said A. B. be, and the same are hereby enlarged into a fee simple, To the intent that the said A. B. shall acquire an estate in fee simple in the said hereditaments (including mines and minerals), and have the same vested in him accordingly, but upon the trusts declared by a Subsidiary Vesting Deed of even date herewith, and made between the said A. B., of the one part, and the trustees, of the other, but executed immediately after these presents (*h*). IN WITNESS, &c.

Of right of tenant for life to terms.

Declaration that term shall be enlarged into fee simple.

FIRST SCHEDULE—*Freehold and leasehold hereditaments.*

SECOND SCHEDULE—*Leasehold hereditaments as described in the Lease.*

V.

PRECEDENT V.

SUBSIDIARY VESTING DEED AFTER ENLARGEMENT OF LONG TERM.

SUBSIDIARY VESTING DEED *supplemental to* PRINCIPAL VESTING DEED *and to* DEED *of* ENLARGEMENT *of* LONG TERM *settled by* SETTLEMENT *existing before* 1926.

THIS SUBSIDIARY VESTING DEED, made the —— day of ——, BETWEEN A. B., of, &c. [*widow of W. B. and tenant for life*], of the one part, and X., of, &c., and Y., of, &c. (herein called "the trustees"), of the other part, SUPPLEMENTAL (1) to a Settlement created by the Will, dated the —— day of ——, of W. B., who died on the —— day of —— [*before*

(*h*) See L. P. Act, 1925, sect. 153, sub-sect. (9), set out under General Remarks above, and see next Precedent.

PRECEDENT V.

SUBSIDIARY VESTING DEED AFTER ENLARGEMENT OF LONG TERM.

1926], whereby the hereditaments hereinafter described, which were at his death held by him for the residue of a term of 1,000 years from the —— day of —— created by a lease dated, &c., and made between [*parties*] at a peppercorn rent, were settled in trust by reference to certain freehold land thereby devised, so as to go along with such freehold land as far as the law permitted; (2) to a Principal Vesting Deed dated, &c., and made between the trustees, of the one part, and the said A. B., of the other part, whereby the freehold and leasehold hereditaments settled by the said Will were vested in the said A. B. upon the trusts thereof; and (3) to a Deed of Enlargement of even date herewith under the hand and seal of the said A. B., but executed immediately before these presents, whereby the said term of 1,000 years was enlarged into a fee simple as therein mentioned. WITNESSETH that, in accordance with the provisions of the Law of Property Act, 1925, and in consideration of the premises :—

1. The said A. B. Doth hereby declare that the hereditaments described in the Schedule hereto are vested in the said A. B. in fee simple upon the trusts of the said Will declared concerning the freehold hereditaments, or upon such other trusts as the same ought from time to time to be held.

2. The trustees are the trustees for the purposes of the Settled Land Act, 1925, of the settlement created by the said Will.

3. The power of appointing new trustees is vested in the said A. B. during her life (*i*). IN WITNESS, &c.

SCHEDULE—*Description of hereditaments.*

(*i*) See note to preceding Precedent.

EXCHANGES.

General Remarks.

Modern exchanges.

Exchanges of land or of any interest therein are now generally effected, with or without payment of money for equality of exchange, by a mutual assurance in duplicate, so that the property given and taken in exchange appear on the same instrument, but may be effected by two deeds.

Common law exchanges.

The old common law "exchange" (see Sheppard's Touchstone (1821), ch. xvi.; 4 Byth. & Jarm. (1840), pp. 1—36), under which a *condition* for right of re-entry on the land given in exchange if the grantor were evicted from the land taken in exchange, and a *warranty* to enable him to recover the value of so much of his own land as was given in exchange as should be recovered from him of the land taken in exchange were implied, is obsolete.

Now no implied condition at law.

Now an exchange made by deed after 1st October, 1845, does not imply any condition in law: see L. P. Act, 1925, sect. 59, replacing sect. 4 of the R. P. Act, 1845.

Deed when required.

As an exchange is an "assurance," and therefore within the definition of a "conveyance" under sect. 205, sub-sect. (1) (ii) of the L. P. Act, 1925, it is void for the purpose of conveying a legal estate unless made by deed: see L. P. Act, 1925, sect. 52, replacing sect. 3 of the R. P. Act, 1845.

How far an exchange is a sale.

An exchange of property, so far as it is a species of barter, resembles a sale, for where no money passes, the land given in exchange is so given in consideration of, and may generally be presumed to be, the equivalent in value of the land taken in exchange. For some purposes, however, the fact that no money passes distinguishes an exchange from a conveyance on sale, and it would be unsafe to assume that a reference in any instrument, statutory or otherwise, to a "sale" necessarily includes an "exchange": see, for example, L. P. Act, 1925, sect. 45, sub-sect. (10), set out at p. 93.

Contracts for exchange of land.

An exchange is clearly a "disposition" within sect. 40 of the L. P. Act, 1925 (replacing part of sect. 4 of the Statute of Frauds), so that a contract for the exchange of land, in order to be enforceable in an action, must be in writing, as in the case of a contract for sale.

As to how far contracts for exchange (equally with contracts for sale) of land are deemed to extend, where the subject-matter is (i) a mortgage term, (ii) an equitable interest, or (iii) an entailed interest, see L. P. Act, 1925, sect. 42, sub-sect. (4), set out at p. 95.

The provisions in sect. 44 (statutory commencement of title) and sect. 45 (other statutory conditions of sale) and sect. 47 (application of insurance money), which sections are set out under CONTRACTS, General Remarks, are applicable to contracts for exchange made after 1925.

Applications to the Court.

The power of a vendor or purchaser to apply to the Court in a summary way on any question connected with the contract, is now extended to contracts for exchange of any interest in land : see L. P. Act, 1925, sect. 49, replacing V. & P. Act, 1874, sect. 9.

Discharge of incumbrances.

The power of the Court on sales to discharge incumbrances, which was conferred by the C. Act, 1881, sect. 5 (as amended by sect. 1 of the C. Act, 1911), is also extended to exchanges by sect. 50 of the L. P. Act, 1925.

Settled land.

By the S. L. Act, 1925, a person having the powers of a tenant for life may make an exchange of the settled land, or of any easement, right, or privilege, for other land or for any easement, right, or privilege over other land : see sect. 38 (iii).

This power is regulated by sect. 40 as follows :—

> **40.**—(1) Save as in this Part of this Act provided, every exchange shall be made for the best consideration in land or in land and money that can reasonably be obtained.
>
> (2) An exchange may be made subject to any stipulations respecting title, or evidence of title, or other things.
>
> (3) Settled land in England or Wales shall not be given in exchange for land out of England and Wales.

In addition to these general powers, various other powers are conferred in the case of an exchange or other disposition under the powers of the Act : *e.g.* see sect. 49 (restrictions and reservations), sect. 50 (mines and minerals), sect. 57 (small dwellings, &c.).

Money required for equality of exchange may be raised by mortgage (sect. 71, sub-sect. (1) (iii)), or be paid out of capital money : sect. 73, sub-sect. (1) (v).

Universities and colleges.

Somewhat similar powers are conferred on certain universities and colleges by the Universities and College Estates Act, 1925.

Registration of title in compulsory areas.

In areas where registration of title to land is compulsory, the L. R. Act, 1925, now expressly provides that a conveyance by way of exchange, "where money is paid for equality of exchange," is included in the expression "conveyance for sale"

within the operation of the compulsory provisions as affecting the passing of the legal estate : sect. 123, sub-sect. (3). Where no money is paid the compulsory provisions do not apparently apply.

Exchanges by Minister of Agriculture and Fisheries.

Lands may also be exchanged by Order of the Minister of Agriculture and Fisheries under various statutes : see Chronological Table and Index of Statutes, Vol. II., Index to the Statutes in Force, "Exchange." Particulars as to the way of effecting such exchanges may be ascertained on inquiry at the Ministry.

Stamp duties.

Where no money is paid for equality of exchange, or the money so paid does not exceed £100, only a ten-shilling stamp is required : see Stamp Act, 1891, sect. 73, and "Exchange or Excambion." If the money paid for equality exceeds £100 but does not exceed £500, the old *ad valorem* duty on conveyances on sale will apply, and the certificate should be added; but if it exceeds £500 the double duty has to be paid : see Finance, &c., Act, 1910, sect. 73.

PRECEDENT.

PRECEDENT. — EXCHANGE.

DEED OF EXCHANGE, *with Variations where sum paid for Equality of Exchange.*

Recital of title to each property;

THIS EXCHANGE, made, &c., BETWEEN A. of, &c., of the one part, and B. of, &c., of the other part. WHEREAS the said A. is seised of the hereditaments comprised in the First Schedule hereto in fee simple in possession, free from incumbrances, and the said B. is seised of the hereditaments comprised in the Second Schedule hereto, in fee simple in possession, free from incumbrances.

—of agreement for exchange.

AND WHEREAS it has been agreed that the said A. and B. shall exchange the said hereditaments [and that the said B. shall pay to the said A. the sum of £—— for equality of exchange]. NOW THIS DEED WITNESSETH as follows :—

Conveyance by one party.

1. In pursuance of the said agreement and in consideration of the conveyance by the said B. hereinafter contained [and of the sum of £—— paid by the said B. to the said A. (the receipt whereof the said A. doth hereby acknowledge)], the said A., AS BENEFICIAL OWNER, Doth hereby convey unto the said B. ALL AND SINGULAR the hereditaments described in the First Schedule hereto and delineated on the Plan hereto and thereon coloured pink, TO HOLD UNTO the said B. in fee simple, IN EXCHANGE for

Parcels.

Habendum.

PRECEDENT. — EXCHANGE.

the hereditaments hereinafter conveyed in exchange by the said B.

Conveyance by the other party.

2. In pursuance of the said agreement and in consideration of the conveyance by the said A. hereinbefore contained, the said B., AS BENEFICIAL OWNER, Doth hereby convey unto the said A. ALL AND SINGULAR the hereditaments described in the Second Schedule hereto, and delineated on the Plan hereto and thereon coloured blue, TO HOLD UNTO the said A. in fee simple, IN EXCHANGE for the hereditaments hereinbefore conveyed in exchange by the said A. [*If equality money is paid and exceeds* £100, *but does not exceed* £500, *add certificate*, p. 149.] IN WITNESS, &c. (*a*).

Parcels.

Habendum.

FIRST SCHEDULE—*Hereditaments conveyed by A. and taken in exchange by B.*

SECOND SCHEDULE—*Hereditaments conveyed by B. and taken in exchange by A.*

(*a*) The deed is intended to be executed in duplicate.

INDEMNITY DEEDS (*a*).

PRECEDENTS.

I.

PRECEDENT I. — BOND OF INDEMNITY.

**BOND *of* INDEMNITY *to a* PURCHASER *by a* VENDOR *against any* CLAIM *by or through a person believed, but not positively known, to have died without issue, who, or whose issue, if existing, might have a claim to* ONE-FIFTH *of the* LANDS SOLD.

KNOW ALL MEN, by these presents, that I, A. B., of, &c. [*vendor*], am bound to C. D., of, &c. [*purchaser*], in the sum of £—— [*penalty*] (*b*), to be paid to the said C. D., or his certain attorney, or to his personal representatives, or assigns, FOR WHICH PAYMENT I bind myself (*c*) by these presents, SEALED with my seal. DATED this —— day of ——, 19—. Bond.

WHEREAS the hereditaments conveyed by the hereinafter recited conveyance were, in the year —— [*before* 1926], purchased by the above-named A. B. from E. F., G. F., H. F., and I. F., who claimed to be entitled thereto, as the four surviving sons and co-heirs in gavelkind of M. F., late of ——, deceased, who died on the —— day of ——, seised thereof, and intestate. AND WHEREAS the said M. F. had one other son, L. F., of whom nothing has been heard since the —— day of —— [*or* month of —— *or* the year ——], when he was residing in California, Recital of former purchase by present vendor from four co-heirs in gavelkind; —of supposed death without issue of another co-heir in the ancestor's lifetime;

(*a*) As to indemnity deeds, see Davidson's Prec. Conv., 3rd ed., Vol. V., Pt. II., pp. 191-196; and as to bonds, pp. 267-278. The following Precedent is an indemnity against a defect of title to which the vendor's covenants for title might not extend. This indemnity might also be effected by a Deed of Covenant (compare next Precedent), but this Precedent is retained as an example of a Bond, and as more appropriate where the damages can be approximately calculated.

According to the present practice the Bond itself is by the obligor in the first person, whether or not followed by recitals, while the Condition refers to the obligor in the third person, for the Bond and the Condition constitute two distinct instruments.

(*b*) The penalty of the bond will be the sum agreed upon as the maximum damages recoverable, if the title prove defective; and in the present case, as the supposed defect of title affects only one-fifth of the property, would probably be double one-fifth of the purchase-money.

(*c*) The words "my heirs, executors, and administrators," formerly inserted, are now unnecessary: see L. P. Act, 1925, sect. 80 (1), replacing sect. 59 of the C. Act, 1881. If this bond were entered into by several, it would generally be expressed to bind "ourselves [and every two or more of us] jointly, and each of us severally."

PRECEDENT I.

BOND OF INDEMNITY.

and who is believed to have died shortly after that date without having been married, but of whose death no conclusive evidence has been obtained. AND WHEREAS by a Conveyance on sale bearing even date with the above-written bond, and made between the said A. B., of the one part, and the said C. D., of the other part, certain hereditaments situate in the Parish of ——, in the County of Kent, and specified in the Schedule to the same conveyance, have been conveyed by the said A. B. to the said C. D. in fee simple. AND WHEREAS, on the treaty for the said sale, it was agreed that the said A. B. should enter into a bond in the above-mentioned penalty of £——, for indemnifying the said C. D., and his successors in title, against any possible claim on the part of or through the said L. F., or his issue. NOW THE CONDITION of the above-written BOND is such, that IF no claim, action, or other proceeding shall before the —— day of —— (*d*), be made, commenced, or taken, at law, or in equity, by the said L. F., or any issue of the said L. F., or any person claiming through or under him or his issue, upon or in respect of the hereditaments comprised in the said conveyance, or any part thereof, OR IF the said A. B., or his personal representatives, shall at all times hereafter keep indemnified the said C. D. and his successors in title, and also the said hereditaments, against all claims, actions, and other proceedings, which shall, before the said —— day of —— be made, commenced, or taken by the said L. F., or his issue, or any such other person as aforesaid, THEN AND IN EITHER OF THE SAID CASES the above-written bond shall be void, otherwise the same shall remain in full force.

—of conveyance by vendor to purchaser;

—agreement to give indemnity.

Condition to be void;

—if no adverse claim;

—or if vendor indemnifies purchaser against any such claim.

II.

PRECEDENT II.

AGAINST ANNUITY AND LEGACY.

COVENANT *of* INDEMNITY *in respect of land charged with an* ANNUITY *and* LEGACY, *by the* INVESTMENT *of part of the purchase-money in the names of the* VENDOR *and* PURCHASER, *and Declaration of Trust accordingly.*

THIS DEED OF COVENANT, made the —— day of ——, 19—, BETWEEN A., of, &c. (herein called "the vendor"), of the one part, and B., of, &c. (herein called "the purchaser"), of the other part. WHEREAS M., late of, &c., deceased, who died on the —— day of ——, was at his death seised in fee simple

Recital of seisin of testator;

(*d*) Thirty years from the date of the father's death. At this date, notwithstanding any disability, all rights of the son or his issue will be barred under sect. 5 of the Real Property Limitation Act, 1874. Under sect. 4 of that Act absence beyond seas ceased to be a disability.

of divers hereditaments situate at —— in the Parish of —— in the County of ——, and known as and hereinafter called "the X. estate." AND WHEREAS the said M., by his Will dated the —— day of ——, and proved in the —— Registry on the —— day of —— by the executors therein named, devised the X. estate by the description of his freehold estate situate at ——, in the County of ——, to his nephew, the vendor, in fee simple, subject nevertheless to and charged with certain annuities and pecuniary legacies thereby bequeathed, including an annuity of £100 to the testator's brother N. for his life, and a legacy of £—— unto and equally among the children of the said N. living at his death. AND WHEREAS all the said annuities other than the said annuity to the said N. have determined and been satisfied down to the determination thereof respectively, and all the said legacies other than the legacy to the children of the said N. living at his death have been paid, and the duties on the succession of the vendor to the X. estate have also been paid. AND WHEREAS the said N. is living and has children, and his annuity has been paid down to the —— day of —— last. AND WHEREAS the vendor lately contracted with the purchaser for the sale to him of the X. estate in fee simple in possession free from incumbrances, at the price of £——, and, for the purpose of carrying into effect the said contract, the estate has been conveyed to the purchaser in fee simple, by a deed bearing even date with these presents. AND WHEREAS, upon the treaty for the purchase of the said hereditaments by the purchaser, it was arranged between him and the vendor that the sum of £—— (part of the purchase-money of £——) should be invested in the joint names of the vendor and the purchaser in any investment authorised by law for the investment of trust money, as a provision by way of indemnity to the purchaser and his successors in title and to the X. estate against the said annuity to the said N. and legacy to his children living at his death. AND WHEREAS, in pursuance of the said arrangement, the sum of £—— has been invested in the purchase of the sum of £—— Two-and-a-half per Cent. Consolidated Stock in the names of the vendor and the purchaser. AND WHEREAS the sum of £——, the residue of the said purchase-money, has been paid by the purchaser to the vendor, as the vendor doth hereby acknowledge. NOW THIS DEED WITNESSETH, that, for further carrying the said arrangement into effect, and in consideration of the premises, IT IS HEREBY agreed as follows :—

—of his Will;

—of payment of annuities and legacies, except an annuity to a brother and legacies to his children;

—of annuitant being living and having children, and of his annuity having been paid to date;

—of contract for sale and conveyance of the estate;

—of agreement for investment of part of the purchase-money as an indemnity against charges;

—of investment accordingly;

—of payment of residue of the purchase-money.

Declaration of trust of sum invested;

1. The vendor and the purchaser, and other the trustees or trustee for the time being thereof, shall stand possessed of the said sum of £—— Two-and-a-half per Cent. Consolidated Stock,

PRECEDENT II.

AGAINST ANNUITY AND LEGACY.

or the investments for the time being representing the same (herein called "the indemnity fund"), and the income thereof, (1) UPON TRUST and to the intent that the indemnity fund and the income thereof may constitute a fund to keep indemnified the purchaser and his successors in title and the X. estate against the said annuity of £—— by the said Will bequeathed to the said N. for his life and the duties on the determination thereof, and against the said legacy of £—— by the same Will bequeathed to the children of the said N. living at his death, and all interest upon or in respect of such legacy and the duty thereon, and against all actions, expenses, claims, and demands by reason of the non-payment of the said annuity, legacy, interest, and duties, or any of them, or any part thereof respectively; (2) AND UPON TRUST that, when and so often as it shall be necessary to apply the capital or income of the indemnity fund for the purpose of indemnifying the purchaser, or his successors in title, or the X. estate, against the said annuity, legacy, interest, and duties, or any of them, or the said actions, expenses, claims, and demands as aforesaid, the vendor and the purchaser, or other the trustees or trustee for the time being thereof, shall apply the income, or out of the capital raise by sale, mortgage, or otherwise, and apply the net money arising therefrom accordingly, and do all necessary and proper acts for that purpose; (3) AND subject and without prejudice to the trusts hereinbefore declared, and until the same shall be required for the purposes of the indemnity intended to be hereby given, shall pay to the vendor, his personal representatives or assigns, the income of the indemnity fund for his and their own use; (4) AND when and so soon as the said annuity of £—— shall have determined, and all arrears thereof, and the duties on the determination thereof shall have been paid, and the said legacy of £—— shall have been paid to the children of the said N. living at his death, and all interest in respect of such legacy, and the duty thereon, shall also have been paid, then, if there shall be any part of the indemnity fund, or of the income thereof, then remaining unapplied or undisposed of for the purposes aforesaid, shall hold the same IN TRUST for the vendor, or his personal representatives, as part of his personal estate.

—upon trust to be an indemnity fund against annuity and legacy;

—and, when necessary, to be applied for the purpose;

—and subject thereto, that the annual income shall be paid to the vendor;

—and when annuity shall have determined, and legacy been paid, the trust fund to be held in trust for vendor.

2. The vendor doth hereby covenant with the purchaser that the vendor or his personal representatives will at all times keep indemnified the purchaser and his successors in title and the X. estate against the said annuity of £——, and the duties on the determination thereof, and against the said legacy of £——, and interest and the duty thereon, and against all actions, expenses, claims and demands by reason of the non-payment

Covenant by vendor to keep purchaser indemnified against annuity and legacy.

of the said annuity, legacy, interest and duties, or any of them, or any part thereof respectively.

3. The trustees or trustee for the time being hereof may from time to time vary the existing investment representing the indemnity fund for any investment authorised by law for the investment of trust money.

Power to each party to appoint a new trustee.

4. The power of appointing a new trustee or new trustees of these presents in the place of the vendor, or of any trustee appointed in his place, shall be exercisable by the vendor or his acting personal representatives or representative, and the power of appointing a new trustee or new trustees of these presents in the place of the purchaser, or of any trustee appointed in his place, shall be exercisable by the purchaser or other the owners for the time being of the mansion house of X. IN WITNESS, &c.

LEASES.

General Remarks.

Meaning of "lease."

The Precedents arranged under this heading comprise examples of instruments whereby the relation of landlord and tenant is created for a fixed term at a rent. The term so created, whether for a period of years, or from year to year, or for part of a year, is within the definition of "term of years absolute" in the L. P. Act, 1925 (sect. 205, sub-sect. (1) (xxvii)), and is therefore capable of subsisting as an estate at law: sect. 1, sub-sect. (1) (b).

A lease creates an estate by demise, and is not merely a contract (see *London and Northern Estates Co.* v. *Schlesinger*, [1916] 1 K. B. 20; *Whitehall Court* v. *Ettlinger*, [1920] 1 K. B. 680; *Matthey* v. *Curling*, [1922] 2 A. C. 180), and is therefore distinguishable from a "licence": see *King* v. *David Allen, &c., Ltd.*, [1916] 2 A. C. 54.

Entry not necessary to to create estate.

Now that the doctrine of *interesse termini* (see *Mann & Co.* v. *Land Registry*, [1918] 1 Ch. 202) is abolished, the term is capable of taking effect from the date fixed for the commencement of the term without actual entry: sect. 149, sub-sects. (1), (2).

Parol leases.

Notwithstanding the provisions under which the creation of an interest in land is required to be in writing (see sect. 53, sub-sect. (1) (a)), leases for a term not exceeding three years at the best rent which can reasonably be obtained without fine may be created by parol, if taking effect in possession: sect. 54, sub-sect. (2).

Deed, when necessary.

Subject to the above exception, a lease must not only be in writing (sect. 53, sub-sect. (1) (a)), but as it creates a legal estate in land, must be by deed (sect. 52, sub-sects. (1) and (2) (d)); while an agreement for a lease, being a contract for the disposition (see sect. 205, sub-sect. (1) (ii)) of land, must be in writing: see sect. 40. Until a lease is executed this contract presumably creates an equitable interest in the term from the date of its agreed commencement.

Agreement for a lease.

Otherwise, the distinction between an agreement for a lease and a lease has ceased to be of importance, as a person holding under an executory agreement for a lease of which specific performance would be granted must now be treated as holding on the terms of the agreement: see *Walsh* v. *Lonsdale* (1882),

21 Ch. D. 9, and, among later cases, *Gilbey* v. *Cossey* (1912), 106 L. T. 607; *Inland Revenue Commissioners* v. *Derby*, [1914] 3 K. B. 1186; *Brough* v. *Nettleton*, [1921] 2 Ch. 25.

Thus in most cases (though not in all) the same legal results follow from an agreement to grant a lease as from a lease itself, provided that the agreement is one which can be specifically enforced by the Court. To entitle the tenant to specific performance the date at which the lease is to begin must be defined (*Edwards* v. *Jones* (1921), 124 L. T. 740); and in an action to enforce any condition of the lease agreed to be granted, specific performance should be expressly claimed: *Gray* v. *Spyer*, [1921] 2 Ch. 549; reversed on other grounds, [1922] 2 Ch. 22. Before specific performance can be granted, an agreement for a lease must comply with sect. 40 of the L. P. Act, 1925 (which replaces part of sect. 4 of the Statute of Frauds, and is set out under CONTRACTS, General Remarks, at p. 85), or if by parol there must be part performance: see *Chapronière* v. *Lambert*, [1917] 2 Ch. 356; *Biss* v. *Hygate*, [1918] 2 K. B. 314.

Expense of preparing lease.

In the absence of special stipulation, the prevailing custom is that the lease is prepared by the solicitor of the landlord, at the expense of the tenant (*Grissell* v. *Robinson* (1836), 3 Bing. N. C. 10); but the expense of the counterpart falls on the lessor: *Jennings* v. *Major* (1837), 8 C. & P. 61; *Re Negus*, [1895] 1 Ch. 73. It is, however, not unusual in agreements for leases to provide that each party shall bear his own costs, or that the expenses shall be shared equally. The above rule still holds good as to leases and underleases or tenancy agreements. As to sales effected by demise and sub-demise, see sect. 48, sub-sect. (3) of the L. P. Act, 1925, set out under CONTRACTS, &c., General Remarks, p. 95; and see Special Condition XXX., at p. 122.

Points to be considered in preparing leases.

Apart from the length of the tenancy and the rent to be paid, which, of course, are the first matters for consideration, there are two important matters which, to prevent future misunderstanding, should be clearly settled, the one as to what outgoings are to be paid by the tenant, and the other as to repairs.

Meaning of "outgoings."

As to outgoings, it is not generally intended that in short tenancies the tenant should pay more than the usual rates and taxes, but the words "and outgoings" are often added, the full meaning in law of which is not always appreciated, especially by the tenant. The word "outgoings" has been the subject of numerous judicial decisions, which in many cases have resulted in saddling the tenant with various kinds of burdens which are often rather in the nature of permanent improvements, and should therefore properly be borne by the landlord.

Any outgoings which are intended to be paid by the lessor, and which are not of necessity payable by him, should be expressly excepted, or the covenant may be expressly confined to such as are usually payable by the tenant. The word "outgoings" has been held to include rates and charges made by statute payable by the owner of the premises, *e.g.*, the expenses of drainage works or paving under the Met. M. Act, 1855, or the P. H. Acts. See *Stockdale* v. *Ascherberg*, [1904] 1 K. B. 447 (tenancy for three years with agreement by tenant to pay "outgoings"); *Harris* v. *Hickman*, [1904] 1 K. B. 13 (yearly tenancy with the like agreement); *Howe* v. *Botwood*, [1913] 2 K. B. 387 (as to reconstruction of drainage); compare *Henman* v. *Berliner*, [1918] 2 K. B. 236. The tendency of the Courts, illustrated by the cases mentioned, is to put a broad construction upon a lessee's covenant for payment of "outgoings," but it is doubtful whether the decisions have not gone too far in relation to expenses incurred in compliance with the regulations of public authorities: see *Stuckey* v. *Hooke*, [1906] 2 K. B. 20. Upon the construction of similar covenants by lessors, see *Badcock* v. *Hunt* (1888), 22 Q. B. D. 145 (where the covenant was to pay rates generally); *Re Floyd*, [1897] 1 Ch. 633 (where it was for payment of water rate); *Bourn & Tant* v. *Salmon & Gluckstein, Ltd.*, [1907] 1 Ch. 616 (where a covenant to pay rates was held to include the water rate); *Mansfield* v. *Relf*, [1908] 1 K. B. 71 (where it was for payment of land tax); and *Salaman* v. *Holford*, [1909] 2 Ch. 602 (where the covenant was for payment of "rates and taxes now payable or hereafter to become payable," and the assessment had been increased by sub-letting at a profit).

The wide interpretation put upon the word "outgoings" may (as in some of the following Precedents), in fairness to the tenant, be limited by adding "usually payable by a tenant." This limitation is intended to exclude such landlord's taxes as in law may be, and sometimes are, expressly made payable by the tenant, and also special assessments and other impositions which should reasonably be paid by the owner rather than the occupier.

Landlord's taxes.

The taxes necessarily, or, in some cases, primarily, and apart from agreement to the contrary, payable by the landlord are (1) the property tax, (2) tithe rentcharge, (3) land tax, (4) sewers rates. Other rates, such as poor rates and district rates and taxes, fall on the occupier, although by special agreement the rates are sometimes paid by the landlord: see Statement of Rates Act, 1919, and *Reigate* v. *Wilkinson*, [1919]

W. N. 310. Inhabited house duty, which was a charge on the occupier, is now abolished : see Finance Act, 1924, sect. 20.

Property tax.

The property tax, when paid by the tenant, can be deducted by him from his rent, and the landlord is bound to allow such deduction, and any agreement to the contrary is void, but the tenant can only deduct so much as represents the rate to the pound on the rent he pays : see Income Tax Act, 1918, Sched. A, No. VIII., r. 1, and All Schedules Rules, r. 23. If a tenant holds rent free, or at a peppercorn rent, he can deduct nothing : *Drughorn* v. *Moore*, [1924] A. C. 53. The tenant cannot deduct the tax until he has paid it (*Barnes* v. *Kyffin*, [1916] W. N. 166), or more than he has actually paid : *Rossdale* v. *Fryer*, [1922] 2 K. B. 303. He need not produce the receipt : *North London, &c.* v. *Moy*, [1918] 2 K. B. 432. As to whether he can deduct previous tax from subsequent rent, see *Hill* v. *Kirschenstein*, [1920] 3 K. B. 556, and *Kirk* v. *Cunningham*, [1921] 3 K. B. 637.

Tithe rentcharge.

The landlord is liable to pay tithe rentcharge, notwithstanding any agreement to the contrary, by virtue of the Tithe Act, 1891 : see *Tuff* v. *Drapers' Guild*, [1913] 1 K. B. 40.

Land tax.

Land tax, although like property tax payable in the first instance by the tenant, may be similarly deducted from the rent. Unlike property tax, however, it may by agreement be wholly imposed on the tenant.

Sewers rates.

In the absence of agreement to the contrary, *e.g.*, to pay all "outgoings," a sewers rate is payable by the landlord, though often paid in the first instance by the tenant : see *Palmer* v. *Earith* (1845), 14 M. & W. 428; *Smith* v. *Humble* (1854), 15 C. B. 321. But this would not, it is submitted, apply to an ordinary sanitary rate under the P. H. Acts, either in an urban district, or in a contributory place in a rural district. Such sanitary rate, which is primarily part of the general district rate or poor rate, would usually fall on the tenant : see P. H. Act, 1875, sects. 207 to 232.

Repairing covenants.

As to repairs, the extent of the tenant's liability under a general covenant to keep a house in repair usually varies according to the age, character, and locality of the house : see *Anstruther-Gough-Calthorpe* v. *McOscar*, [1924] 1 K. B. 716. As to the construction of a covenant by a mortgagor to repair, see *Woodifield* v. *Bond*, [1922] 2 Ch. 40.

The addition of the words "fair wear and tear excepted" is generally supposed to qualify a repairing covenant, but to what extent is not yet clearly settled : see *Davies* v. *Davies* (1888), 38 Ch. D. 499; *Terrell* v. *Murray*, (1901) 17 T. L. R. 570; *Citron* v. *Cohen* (1920), 36 T. L. R. 560; *Jones* v. *Geen*, [1925] 1 K. B.

659. See also *Jones* v. *Joseph*, [1918] W. N. 52; 87 L. J. K. B. 510, where during the tenancy the house became infested with bugs. As to the liability of the landlord who agreed "to keep the cottage dry, and the outside in repair," see *Hewitt* v. *Rowlands*, [1924] W. N. 116; and as to his liability to repair and reinstate continuing after the expiration of the term, see *Matthey* v. *Curling*, [1922] 2 A. C. 180.

"Usual" covenants.

There is no hard-and-fast rule as to what are "usual" covenants in a lease, where, for example, an agreement for a lease is to be carried into effect and the agreement is either merely to grant a lease or to grant a lease with all usual covenants: see *Church* v. *Brown* (1808), 15 Ves. 258.

The only clauses understood to be strictly usual in a lease of a house are: (1) Covenants by the lessee (a) to pay rent and such taxes as are not payable by the landlord, (b) to keep and deliver up the premises in repair, and (c) to allow the landlord to enter and view the state of repair; (2) A clause for re-entry in default of payment of rent; (3) The usual qualified covenant by the landlord for quiet enjoyment by the tenant. See Davidson's Prec. Conv., 3rd ed., Vol. V., Pt. I., pp. 50, &c.; *Hampshire* v. *Wickens* (1878), 7 Ch. D. 555; *Re Lander and Bagley*, [1892] 3 Ch. 41. A covenant not to assign or underlet is not a "usual" covenant: see *De Soysa* v. *De Pless Pol*, [1912] A. C. 194.

Stamp duties.

Stamp duties payable in respect of leases and tenancy agreements are regulated by the Stamp Act, 1891, "Lease or Tack," and sects. 75 to 78 (as amended by the Finance, &c., Act, 1910, sect. 75, the Revenue Act, 1911, sect. 15, and the Finance Act, 1924, sect. 35). The short effect of these amendments is (1) that the duties in respect of the rent are doubled; (2) that where a premium is paid (a) the old *ad valorem* duty only is payable in respect of such premium where the rent does not exceed £20 and the value of the premium does not exceed £500 and the instrument contains the usual certificate (see p. 293, note (*p*)), (b) double duty is payable in respect of the premium in other cases (except where a fixed duty of one penny is chargeable).

Leases which contain a covenant by the tenant to pay to the landlord at the end of the term a fixed lump sum in lieu of repairs may, it has been suggested, have to be stamped with an *ad valorem* duty: see sect. 8 of the Revenue Act, 1909.

The duty in the case of a lease (a) of a dwelling-house, or part of a dwelling-house, for a definite term not exceeding a year at a rent not exceeding the rate of £40 per annum is one penny; (b) of any furnished dwelling-house or apartments for

any definite term less than a year, where the rent for such term exceeds £25, is five shillings. In either of these cases the duty may be denoted by an adhesive stamp : see the heading " Lease or Tack," and sect. 78 of the Stamp Act, 1891 (as amended by the Finance Act, 1924, sect. 35).

PRECEDENTS.

I.

AGREEMENT *for a* LEASE (*Short Form*) (*a*).

PRECEDENT I.

AGREEMENT (SHORT FORM).

MEMORANDUM OF AGREEMENT, made the —— day of ——, 19—, BETWEEN A., of, &c. (herein called " the landlord "), and B., of, &c. (herein called " the tenant "), WHEREBY the landlord agrees to let and the tenant agrees to take ALL THAT, &c. [*see* PARCELS], for —— years from the —— day of ——, at the yearly rent of £——, clear of all taxes, rates, and outgoings usually payable by a tenant (*b*), and payable by equal half-yearly payments on the —— day of ——, and the —— day of ——, in every year, the first of such payments to be made on the —— day of —— next. The tenant to keep the premises, and at the end of the term give them up in the same order and repair as they now are, and to keep them insured against loss or damage by fire in a sum not less than £——, and, when required, to produce the policy and premium receipts. The landlord to have the right of re-entry on breach by the tenant of any condition herein contained (*c*). IN WITNESS, &c.

(*a*) As to the effect of agreements for leases, see General Remarks above. The agreements for leases here given are to be signed only, not sealed and delivered.

(*b*) As to what " outgoings " may include, apart from some such limitation, see General Remarks above.

(*c*) Any further stipulation required may be here inserted. This form should only be adopted in very simple cases, and in which the saving of expense is a great object; for ordinary purposes the next Precedent should be used. The insertion in the lease of a power of re-entry on breach of covenants cannot be claimed, unless expressly provided for : see *Re Lander and Bagley*, [1892] 3 Ch. 41, and as to what are " usual covenants," see General Remarks above.

II.

PRECEDENT II. — AGREEMENT (FULL FORM).

AGREEMENT *for a* LEASE (*Full Form*).

Agreement to grant a lease for a certain term at a certain rent.

AN AGREEMENT, made this —— day of ——, BETWEEN A., of, &c. (herein called "the landlord"), of the one part, and B., of, &c. (herein called "the tenant"), of the other part, as follows: THE landlord shall let, and the tenant shall take, ALL THAT, &c. [*parcels*], for the term of —— years from the —— day of ——, at the yearly rent clear of all existing and future taxes, rates, and outgoings (*d*), of £——, to be payable by four equal payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year; the first of such payments to be made on the —— day of —— next.

I. THE landlord will, on the request of the tenant, execute a proper lease (herein called "the lease") of the premises to the tenant, for the term and at the rent aforesaid, to be payable as aforesaid.

That the lease shall contain certain covenants.

II. THE lease shall contain covenants on the part of the tenant (1) for payment of the said net yearly rent of £——, on the days and in manner aforesaid; (2) for payment of all existing and future rates, taxes, and outgoings (*d*); (3) to keep the premises in good condition and repair; AND in such condition and repair to deliver up the same, with all new fixtures and other additions, to the landlord, at the expiration or other sooner determination of the term; (4) to keep the said messuage and buildings insured against damage by fire in a sum not less than ——; AND at all times, when required, to produce the policy or policies, and the receipts for the premiums, to the landlord; (5) not to assign or underlet the premises without licence in writing from the landlord; (6) not to carry on, or permit to be carried on, upon the said premises, any noisome or offensive trade, business, or occupation.

That the lease shall contain a proviso for re-entry;

III. THE lease shall also contain a proviso for re-entry by the landlord, on non-payment of the said yearly rent of £——, or any part thereof, for twenty-one days next after any of the said days on which the same, or any part thereof, shall become due, and whether the same shall have been legally demanded or not, or on the breach of any of the covenants by the tenant in the lease to be contained (*e*).

(*d*) As to the meaning of "outgoings," see General Remarks above, and compare the preceding Precedent.

(*e*) As to the statutory restrictions on the exercise of this right and the power of the tenant to apply to the Court for relief against forfeiture, see sects. 146, 147 of the L. P. Act, 1925.

PRECEDENT II.

AGREEMENT. (FULL FORM).

IV. THE lease shall contain a covenant, on the part of the landlord, that the tenant may, on due payment of the said yearly rent, and on the performance and observance of the covenants by the tenant, quietly enjoy the premises to be demised, without eviction or disturbance by the landlord, or any person claiming through or in trust for him (*f*).

—and a covenant for quiet enjoyment.

V. THE tenant shall duly execute and deliver to the landlord a counterpart of the lease.

That lessee shall execute a counterpart.

VI. THE lease and counterpart shall be prepared by the solicitor of the landlord, and the expenses of preparing and executing this agreement and the lease and counterpart, and all other incidental expenses, shall be paid by the landlord and tenant in equal shares (*g*).

That lease and counterpart shall be prepared by the lessor's solicitor, and the expense equally divided.

VII. Where appropriate, the expressions "the landlord" and "the tenant" include their respective successors in title. IN WITNESS, &c. (*h*).

Interpretation clause.

III.

AGREEMENT *for a* TENANCY *from* YEAR *to* YEAR.

PRECEDENT III.

AGREEMENT FOR TENANCY FROM YEAR TO YEAR.

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN A., of, &c. (herein called "the landlord"), of the one part, and B., of, &c. (herein called "the tenant"), of the other part. THE LANDLORD will, on the request and at the cost of the tenant, grant to the tenant, and the tenant will accept, a lease (herein called "the lease"), of THE HOUSE and SHOP numbered —— in —— Street, in the Parish of ——, for the term of one year from the —— day of ——, and so on from year to year, until the demise shall be determined at the end of the first or any subsequent year by one party giving to the other not less than

Agreement to let.

Parcels.

(*f*) See note (*d*) to Precedent V.

(*g*) As to such expenses, apart from agreement, see General Remarks above.

(*h*) It will be observed that all the covenants and conditions to be contained in the lease are specified in the agreement, because an agreement that the lease shall contain all usual covenants and conditions generally leads to disputes as to what are usual covenants and conditions (see General Remarks above). The method in the text is not free from risk; for, as the nature of each covenant and condition is only mentioned generally, disputes may arise as to its extent and form. The only safe way is either to insert in the agreement all the covenants and conditions literally as they are to stand in the lease, or (which is substantially the same thing and now perhaps usual) to schedule the form of lease; but this makes the agreement so much longer that it is sometimes objected to. The method in the text is the next best. The executor of a lessee is the tenant until assent or assignment to the beneficiary: see *Collis* v. *Flower*, [1921] 1 K. B. 409.

PRECEDENT III.

AGREEMENT FOR TENANCY FROM YEAR TO YEAR.

three [calendar (*i*)] months' previous notice in writing, at the YEARLY RENT of £——, payable quarterly, without deduction, on the usual quarter days, the first quarterly payment to be made on the —— day of —— next (*k*).

Rent.

Lease to contain specified covenants by lessee.

1. THE LEASE shall contain the following covenants by the tenant, namely (1) TO PAY the rent on the days and in manner aforesaid; (2) TO PAY all existing and future taxes, rates, assessments, and outgoings of every description, for the time being payable in respect of the premises (*l*); (3) TO KEEP the premises in good condition and repair during the term, AND in such condition and repair to deliver up the same at the expiration or sooner determination of the term; (4) NOT to carry on any noisome or offensive trade upon the premises; (5) NOT to assign, or underlet, or part with the possession of the premises, without the consent in writing of the landlord (*m*).

Proviso for re-entry;

—and covenant for quiet enjoyment.

2. THE LEASE shall contain (1) a PROVISO for re-entry, if and whenever (*n*) any part of the rent shall be at any time in arrear for twenty-one days, or if and whenever there shall be a breach of any of the tenant's covenants; (2) the usual qualified covenant by the landlord for quiet enjoyment by the tenant. [*Interpretation clause as in Precedent II.*] IN WITNESS, &c.

IV.

PRECEDENT IV.

AGREEMENT FOR BUILDING LEASES.

AGREEMENTS *for* BUILDING LEASES *of parts of an* ESTATE *for laying out* STREETS *and* BUILDING HOUSES.

AN AGREEMENT made the —— day of ——, 19—, BETWEEN A., of, &c., and B., of, &c. (herein called "the landlords"), of the one part, and C., of, &c., and D., of, &c., builders (herein called "the tenants"), of the other part.

Tenants to lay out streets.

1. WITHIN —— years from the date hereof the tenants will, at their own expense, lay out and form upon the parcels of land described in the First Schedule hereto and delineated in the plan hereto annexed, and thereon distinguished as to the different parts by the colours brown and pink, the several streets shown

(*i*) "Month" means "calendar month," unless the context otherwise requires (see L. P. Act, 1925, sect. 61 (a)) but it is generally advisable to use the word "calendar" where such is the intention. See p. 129.

(*k*) As to a tenancy from year to year of an agricultural or pastoral holding, see Precedent XIII.

(*l*) As to "outgoings," see General Remarks above.

(*m*) As to these covenants, see note at end of preceding Precedent.

(*n*) *Shepherd* v. *Berger*, [1891] 1 Q. B. 597, that these words give the landlord a right of re-entry as often as at any moment of time the two conditions in the proviso exist, and is not displaced by a distress for three quarters' rent when by such distress less than two quarters' rent was recovered.

as intended streets on the said plan, and thereon coloured brown, with proper sewers in or under the same, and they will at all times during the term of ninety years from the —— day of ——, 19—, or until the same streets and sewers respectively shall be demised in pursuance of the agreement in that behalf hereinafter contained, or shall be taken over (*nn*) by the local authority, at their own expense, keep the same in good order and repair.

Tenants to build houses on certain parts.

2. WITHIN —— years from the date hereof, the tenants will, at the like expense, build houses on the whole of the land coloured pink on the said plan, with proper drains therefrom into the said intended sewers, or into some other convenient sewers; such houses to be not less than —— in number, and to be either substantial dwelling-houses containing *ten* rooms with separate yards, gardens, forecourts, offices and outbuildings thereto respectively, or dwelling-houses or shops of such other description as may be approved of by the landlords, and to be finished fit for occupation within the time aforesaid.

Tenants to form streets and build houses in conformity with provisions in the Second Schedule.

3. THE tenants will lay out and form all such streets and sewers and drains, and build all such houses as aforesaid, in conformity with the requirements of the local authority or authorities, and with the provisions and specifications in that behalf contained in the Second Schedule hereto, and under the superintendence and to the satisfaction of the surveyor for the time being of the landlords.

Tenants not to carry on offensive trades or dig clay, &c.

4. THE tenants shall not carry on or commit or permit to be carried on or committed upon any part of the said parcels of land or in any building or erection thereon, any manufacture of an obnoxious character, or any noisy noisome or offensive trade, business or occupation, or any nuisance, nor shall they get, dig, or remove out of or from the said parcels of land any clay, sand, loam, gravel, brick or other earth, except such as shall be excavated in the formation of the said streets, sewers and drains, and of the foundations of the said houses, or shall be required for the construction of the sewers, drains, houses and erections aforesaid.

Tenants to pay certain fixed rents until leases are granted.

5. THE tenants will in the meantime and until a lease or leases shall have been granted, in pursuance of the agreement in that behalf hereinafter contained, of the whole of the said parcels of land, or of so much thereof as shall not be taken over by the local authority for streets ways or other public places, pay unto the landlords the several yearly rents following, that is to say, for the first *three* years from the —— day of ——, 19—, the sum of £——; for the *fourth* year from the same day the sum of £——, &c., &c.; AND for the *fifth* and every

(*nn*) See p. 200, note (*q*).

PRECEDENT IV.

AGREEMENT FOR BUILDING LEASES.

subsequent year from the same day the sum of £——; each of such yearly rents to be paid by four equal quarterly payments on the four usual quarter days (*o*) in every year, and the first of such quarterly payments of the said rent of £—— [*the minimum rent*], to be made on the —— day of ——, ——, but so nevertheless that from the yearly rent for the time being payable under this present agreement, there shall always be deducted the yearly rent or rents (if any) which shall for the time being have been reserved and become payable under any lease or leases which shall then have been granted in pursuance of the agreement in that behalf hereinafter contained, and so that if the rent or the total sum of the rents which shall at any time have been reserved and become payable upon any such lease or leases shall be equal to or exceed the rent for the time being payable by virtue of this present clause or provision, such last-mentioned rent shall wholly cease.

Tenants not to remove existing buildings until authorised.

6. THE dwelling-houses, buildings and offices now on the said parcels of land, shall not be removed until the surveyor for the time being of the landlords shall have certified that sufficient buildings have been erected to secure the said yearly rent of £—— [*the maximum*].

Tenants to have power of entry to execute works.

7. THE tenants may enter into possession of the parcels of land described in the First Schedule hereto and delineated on the said plan for the purpose of carrying into execution the several agreements by them hereinbefore contained, and with all rights and powers necessary for such purpose, and particularly with power (after such certificate as aforesaid in that behalf shall have been made) to pull down the said messuages, buildings, and offices now on the said parcels of land, and to make use of or sell and dispose of the materials thereof for the purpose of the new erections or buildings.

Tenants not to assign.

8. THE tenants shall not (except by way of mortgage) assign, underlet, or in any manner dispose wholly or partially of the benefit of this agreement without the previous consent in writing of the landlords.

Landlords to grant leases when houses are built.

9. THE landlords will from time to time, or at any time after the said streets and sewers and drains shall have been formed and made as aforesaid, at the expense of the tenants, when and as often as any *ten* houses (*p*) shall have been erected, built and covered in, to the satisfaction of the said surveyor,

(*o*) Or "the —— day of ——, &c.," specifying the quarter days.

(*p*) It is usual to grant a separate lease of each house; but the Precedent can be adapted to that arrangement by alterations of the simplest character. As to the position when the tenants have entitled themselves to leases of some houses but are in default as to others, see *Lowther* v. *Heaver* (1889), 41 Ch. D. 248.

PRECEDENT IV.

AGREEMENT FOR BUILDING LEASES.

and according to the agreements hereinbefore contained, grant one or more lease or leases of the same and of the sites thereof, and of the intended yards, gardens, forecourts, offices and outbuildings thereto, and such streets or portions of streets as are hereinafter mentioned, but so that not more than *ten* houses shall be comprised in any such lease, and that every such lease shall be for a term which shall expire (unless sooner determined by surrender, re-entry, forfeiture or otherwise) on the —— day of ——, 19—, and shall be as nearly as circumstances will admit, and with such alterations and additions (if any) as circumstances shall require, in the form, and contain the exceptions, reservations, covenants, agreements, and stipulations set forth in the Third Schedule hereto.

Each lease to comprise the whole or part of adjacent street.

10. EXCEPT as to houses facing —— Road (*q*), every such lease shall comprise at least one equal moiety of so much of the street in which the premises therein comprised are situate as shall immediately adjoin such premises, and if any such lease shall comprise houses on both sides of any such street, then the entirety of the street lying between such houses, but in all cases with powers, exceptions and reservations for the use by other persons, as in the Third Schedule hereto is expressed, of the said several streets and of the sewers in or under the same, and in the case of the entirety of any street being included in any such lease as aforesaid, so much of the said form of lease comprised in the Third Schedule as may be necessary shall be altered and made applicable accordingly.

Proportion of rent to be reserved on each lease.

11. THE rent to be reserved by every such lease as aforesaid shall bear the same proportion to the said rent of £—— [*the maximum*] as the area of the land (including the sites of houses and buildings and streets) demised by such lease, shall bear to —— square yards, the total area of the whole of the said parcels of land described in the First Schedule hereto and delineated on the said plan, so that when all the said intended leases of the said houses shall have been granted the total rents thereby reserved shall amount to the said sum of £—— [*the maximum*]; PROVIDED nevertheless that the tenants may require the said rent of £—— to be unequally distributed among the several leases aforesaid, but so that the rent reserved on any such lease shall not exceed one equal *sixth* part of the clear yearly rack-rent of the houses and hereditaments comprised in such lease when fit for habitation.

Tenants to accept leases when granted, and pay all expenses.

12. THE tenants will, when and so often as there shall be *ten* houses erected, built, and covered in, of which no lease shall have been granted, apply for and accept one or more such

(*q*) An existing public road.

PRECEDENT IV.

AGREEMENT FOR BUILDING LEASES.

lease or leases as aforesaid of such houses with the appurtenances as aforesaid without requiring the landlords to show their title to grant the same, and duly execute a counterpart or counterparts of such lease or leases [and prepare any memorial required for registration in a Local Deeds Registry (*r*)]. AND all such leases and counterparts [and memorials] as aforesaid shall be prepared by the solicitors of the landlords, and the tenants will pay the costs of so preparing the same, and of obtaining the execution thereof by all parties [and of registering the same], and all other expenses of and relating to every such lease, and to the premises (including the charges and expenses of preparing and obtaining the execution of these presents in duplicate [and registering the same]), and likewise all fees and other money which may become payable to any district or public surveyor in respect of the premises, and a fee of £—— to the surveyor for the time being of the landlords, on his giving a certificate previous to a lease being granted of any part or parts of the premises for each of the messuages to be comprised therein, as his remuneration for previously and subsequently superintending the erection and completion thereof, and seeing that the same is erected conformably to the agreements hereinbefore in that behalf contained, and in addition thereto his proper and usual charges for making and preparing a ground plan of the property demised, and drawing the same on every such lease and counterpart [and memorial], and also will in the meantime and until such lease or leases shall have been granted perform and observe the covenants by the tenants and conditions to be contained in such lease or leases respectively in the same manner in all respects as if such lease or leases respectively had been actually granted (*s*).

Power of re-entry if rent in arrear, or on breach of agreement.

13. IF and whenever any part of the yearly rent which under or by virtue of these presents shall for the time being be payable by the tenants until leases shall have been granted in pursuance of the provisions in that behalf hereinbefore contained of the whole of the premises hereby agreed to be demised shall be in arrear for ten days, whether legally demanded or not, or if and whenever there shall be a breach of any of the tenants' agreements hereinbefore contained, the landlords may re-enter on the whole of the premises then remaining to be demised, and repossess the same as if these presents had not been entered into, and these presents shall thereupon absolutely determine.

(*r*) It is believed that building *agreements* are not usually registered in a Local Deeds Registry. See also L. R. Act, 1925, sects. 135, 136.

(*s*) See *Driscoll* v. *Battersea*, [1903] 1 K. B. 881.

14. IF the landlords in consequence of the tenants making default in the execution of the works hereinbefore agreed to be done by them or any of such works or in proceeding therein in a workmanlike manner and with proper diligence (whether under such circumstances as shall authorise the landlords to determine this agreement or not) shall at any time think fit to remove the tenants from the further execution of or interference with such works or any of them, the landlords may do so upon the terms following (that is to say), a notice in writing from the landlords to the tenants shall be served upon the latter or left upon the premises specifically pointing out the default on the part of the tenants which shall have taken place, and if the surveyor for the time being of the landlords shall certify in writing that such default has not been remedied within the space of —— after such notice as aforesaid, then and in such case the landlords may remove the tenants from the further execution of or interference with the works, and may employ any other builder or builders or person or persons to finish the same, and pay him or them for so doing, and the money so paid shall be a debt due from the tenants carrying interest at the rate of 6 per cent. per annum, and constitute a first charge on the premises remaining to be demised, which (if not re-entered upon by the landlords) may be sold to pay such charge without regard to any money expended thereon by the tenants, and the landlords may also take possession of the materials, stocks, implements and plant which may be in or upon or connected with the premises or the works.

Power for landlords to remove tenants if they make default (*t*).

15. THE whole of the materials, stocks, implements and plant brought upon any part of the premises by the tenants shall be considered the property of the landlords until the premises whereon the same may be shall have been demised to the tenants, and no portion thereof shall be removed without the consent or order in writing of the surveyor for the time being of the landlords.

Plant to become property of landlords.

16. IF any difference shall arise between the landlords and the tenants touching these presents or anything herein contained, or the construction or operation hereof, or the rights, duties, or liabilities of any party in connection with the premises, the matter in difference shall be referred to two arbitrators, one to be appointed by each party (*u*) pursuant to the provisions

Arbitration clause.

(*t*) As to this and the next following clause, see *Hart* v. *Porthgain Harbour Co.*, [1903] 1 Ch. 690; *Byford* v. *Russell*, [1907] 2 K. B. 522.

(*u*) Or say, "to a single arbitrator," if that mode of reference be preferred.

PRECEDENT IV.

AGREEMENT FOR BUILDING LEASES.

contained in the Arbitration Act, 1889, or any then subsisting statutory modification thereof.

The agreement to create a tenancy at will.

17. THIS AGREEMENT is intended until the leases of the said parcels of land respectively shall be executed, to create a strict tenancy at will on the part of the tenants in respect of the same parcels respectively upon the terms aforesaid, and also to entitle the landlords to the like power and remedy, by distress or otherwise, for the recovery of the rent or respective rents to become due under these presents, as if such lease or leases had been actually granted, and such rent or rents been reserved thereby and had become in arrear (*x*).

Interpretation clause.

18. IN this agreement the expressions "the landlords" and "the tenants" include their respective successors in title. As WITNESS, &c.

FIRST SCHEDULE—*Description of the premises.*

SECOND SCHEDULE—*Specifications, &c.*

THIRD SCHEDULE—*Form of lease.* [*See Precedent XVII.*]

V.

LEASE *of a* COTTAGE *from* YEAR *to* YEAR (*y*).

PRECEDENT V.

OF COTTAGE FROM YEAR TO YEAR.

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN A., of, &c. (herein called "the landlord"), of the one part, and B., of, &c. (herein called "the tenant"), of the other part. THE LANDLORD hereby agrees to let and the tenant to take ALL THAT cottage situate in the Parish of ——, in the County of ——, now in the occupation of ——, with the cow-house, piggeries, garden, and appurtenances therewith usually occupied, for the term of ONE YEAR from the —— day of —— last, and so on from year to year until the demise shall be determined

Agreement to let and take.

Parcels.

Term.

(*x*) It seems necessary to retain this clause, notwithstanding *Driscoll* v. *Battersea*, [1903] 1 K. B. 881.

(*y*) In letting an unfurnished house or part of a house at a rent in London not exceeding £40 and elsewhere £26, there is now implied in the contract a condition that the house is at the commencement of the tenancy and during the tenancy will be kept by the landlord reasonably fit for human habitation, except in certain cases: see Housing Act, 1925, sect. 1; *Ryall* v. *Kidwell*, [1914] 3 K. B. 135; *Dunster* v. *Hollis*, [1918] 2 K. B. 795; *Stanton* v. *Southwick*, [1920] 2 K. B. 643; *Ex parte Rush*, [1922] 2 K. B. 28; *Arlidge* v. *Tottenham U.D.C.*, [1922] 2 K. B. 719; *Ryall* v. *Hart*, [1923] 2 K. B. 464.

As to the right to compensation of the tenant of land not exceeding two acres and cultivated as a farm or garden, and whether attached to a "cottage" (not defined) or not, see Allotments Act, 1922, sects. 3—7. As to cottages let to workmen on a farm holding, see Agr. H. Act, 1923, sect. 14.

PRECEDENT V.

OF COTTAGE FROM YEAR TO YEAR.

at the end of the first or any subsequent year, by either party giving to the other three [calendar] months' previous notice in writing, AT THE YEARLY rent of ——, clear of all deductions, to be paid by equal quarterly payments on the four usual quarter days, the first such payment to be made on the —— day of ——, 19—. THE TENANT further agrees with the landlord (1) TO PAY the said rent on the days and in manner aforesaid; (2) TO PAY all rates, taxes, and outgoings (*z*), now payable, or hereafter to become payable in respect of the premises; (3) TO KEEP the premises (including the fixtures) in good condition and [tenantable] repair (fair wear and tear excepted) (*a*); (4) TO PERMIT the landlord and his agents to enter twice or oftener in every year at any reasonable time of the day to view the condition of the premises; (5) AT the expiration or sooner determination of the demise, to quietly deliver up the premises in such repair and condition as aforesaid. PROVIDED that on breach of any of the tenant's agreements herein contained the landlord may re-enter on any part of the premises in the name of the whole, and thereupon this demise shall determine (*c*). THE LANDLORD agrees with the tenant that the tenant, paying the said yearly rent, and performing and observing the agreements by him herein contained (*d*), may peaceably hold the premises during the demise without any interruption by the landlord or any person claiming under him. [*Interpretation clause as in Precedent II.*] IN WITNESS, &c.

Rent.

Agreement by tenant to pay rent.

To pay taxes.

To keep in repair.

To permit landlord to enter and view (*b*).

To deliver up premises.

Proviso for re-entry.

Agreement by landlord for quiet enjoyment.

(*z*) As to the meaning of "outgoings," see General Remarks above.

(*a*) As to "fair wear and tear," see General Remarks on Repairing Covenants, p. 253. As to "fixtures," see *Boswell* v. *Crucible, &c. Co.*, [1925] 1 K. B. 119.

(*b*) Compare a similar power in sect. 15 (2) of the Housing, &c. Act, 1909.

(*c*) The lessor's rights under this proviso are restricted by sects. 146, 147 of the L. P. Act, 1925, but these sections do not seem to necessitate any alteration in the form of the proviso.

(*d*) These words do not make payment of the rent and performance of the lessee's agreements or covenants a condition precedent to the performance by the lessor of the covenant for quiet enjoyment, but refer (it is submitted) to the lessor's power to enter to view, and on breach of the lessee's covenants, and ought therefore to be retained, notwithstanding *Edge* v. *Boileau* (1885), 16 Q. B. D. 117, which, moreover, decided nothing new. As to covenants by lessors for quiet enjoyment, which, it should be observed, apply to an interference not merely with the title, but also with the possession of the thing demised, see *Davis* v. *Town Properties Investment*, [1903] 1 Ch. 797, in which doubt was thrown by the Court of Appeal upon *Tebb* v. *Cave*, [1900] 1 Ch. 648, and it was suggested that the act complained of must be a direct interference with the enjoyment of the thing demised in order to constitute a breach of the covenant; and see *Harmer* v. *Jumbil, &c., Ltd.*, [1921] 1 Ch. 200. Interruption by the act of the superior landlord is no breach of a covenant in the above form: *Kelly* v. *Rogers*, [1892] 1 Q. B. 910. As to whether a nuisance by noise is a breach of the covenant for quiet enjoyment, see *Phelps* v. *London*, [1916] 2 Ch. 255, 267. As to subsidence of surface caused by mining, see *Jones* v. *Consolidated, &c. Collieries*, [1916] 1 K. B. 123.

VI.

PRECEDENT VI. — OF A HOUSE IN A TOWN.

LEASE *of a* HOUSE *in a* TOWN *with* RESERVATION *of* SEWER. OPTION OF PURCHASE.

THIS LEASE, made, &c., BETWEEN A., of, &c. (herein called "the lessor"), of the one part, and B., of, &c. (herein called "the lessee"), of the other part, WITNESSETH as follows:—

Demise. Parcels.

1. The lessor Doth hereby demise unto the lessee ALL THAT dwelling-house, numbered —— in —— Street, in the Parish of ——, in the town of ——, with the yards, outbuildings, and ground held therewith, as the site thereof is delineated on the plan in the margin of these presents, and is thereon coloured —— (*e*), EXCEPT, nevertheless, out of this demise, and reserved unto the lessor, the full and free right of passage, and running of water and soil from all neighbouring lands and houses of the lessor, through all drains, channels, and sewers in or under the premises [*insert here any other like reservations*]. TO HOLD the premises, except as aforesaid, UNTO the lessee, for the term of —— years from the date of these presents; YIELDING therefor, during the said term, the yearly rent of £—— clear of all deductions (except landlord's property tax), by equal half-yearly [quarterly] payments on the —— day of —— and the —— day of —— [*&c.*] in every year, the first of such payments to be made on the —— day of —— next (*f*) [and the last to be made in advance on the —— day of ——, immediately preceding the expiration of the said term (*g*)].

Exceptions as to drains.

Term.

Reservation of rent.

(*e*) Where part of a house is let—*e.g.*, rooms situate on the first or second floor, or a cellar or basement is excepted, or rooms of an adjacent house come under or over rooms of the premises demised—care should be taken to define the parcels so as to show the exact rights of landlord and tenant: see *Carlisle Café Co., &c.* v. *Muse* (1897), 67 L. J. Ch. 53; *Hope* v. *Cowan*, [1913] 2 Ch. 312; *Goldfoot* v. *Welch*, [1914] 1 Ch. 213; *Phelps* v. *London*, [1916] 2 Ch. 255. As to a lease of a flat or offices for business purposes, see Daniels on Flats (1905); *Lucy* v. *Bawden*, [1914] 2 K. B. 319; *Wood* v. *Wallace* (1921), 90 L. J. K. B. 319; *Taylor* v. *British, &c. Assurance Co.*, [1925] Ch. 395.

(*f*) Such additional words as "and so in proportion for any less period," may now be omitted having regard to the Apportionment Act, 1870, whereby all rents are now to be considered as accruing from day to day, and apportionable accordingly (sect. 2), and the apportioned part of a rent determined by re-entry is made payable on the day when the next entire portion of the rent would have been payable if not so determined, and recoverable in the same manner as such entire portion (sects. 3, 4). See *Swansea Bank* v. *Thomas* (1879), 4 Ex. D. 94; *Hopkinson* v. *Lovering* (1883), 11 Q. B. D. 92; and compare *Re South Kensington Stores* (1881), 17 Ch. D. 161; *Re Howell*, [1895] 1 Q. B. 844; *Bishop of Rochester* v. *Le Fanu*, [1906] 2 Ch. 513.

(*g*) This is intended to facilitate collection of the last payment, which otherwise would not be due until the end of the term, and will enable the lessor to distrain accordingly, which he could not otherwise do. See *London and Westminster, &c. Co.* v. *London and N. W. Ry. Co.*, [1893] 2 Q. B. 49. As to its validity even in a lease under a power, see *Rutland* v. *Wythe* (1843),

PRECEDENT VI.

OF A HOUSE IN A TOWN.

2. The lessee (*h*) Doth hereby covenant with the lessor, THAT the lessee during the said term (1) Will pay the yearly rent hereinbefore reserved, on the days and in manner aforesaid; (2) Will pay all rates, taxes, and outgoings (*i*) now payable or hereafter to become payable in respect of the premises; (3) Will keep the premises insured against loss or damage by fire [or aircraft] (*k*) in such office as the lessor shall approve, AND will, when required, produce to the lessor the policy and the current year's premium receipt [AND will expend all money received in respect of such insurance in reinstating or repairing the premises so destroyed or damaged]; (4) Will keep the premises in good condition and repair, and without any alteration, except such as the lessor shall in writing approve (*l*): AND, at the expiration or sooner determination of the term, so yield up the same to the lessor; (5) Will permit the lessor and his agents, surveyors, and workmen, at all reasonable times during the said term, to enter upon the premises to inspect the same (*m*); (6) Will not at any time during the said term carry on or commit or permit to be carried on or committed upon the premises any [offensive] business or occupation or nuisance, but [will use his utmost endeavours to hinder and prevent by all legal and available

Covenant by lessee, to pay rent, rates, &c.;

—keep premises insured;

—and in repair;

—yield up at end of term;

—that landlord may enter to inspect;

use premises as a dwelling-house only;

---

10 Cl. & Fin. 419, but the terms of the power must, of course, be strictly followed.

(*h*) In the preceding edition it was thought advisable that the lessee should covenant "for himself and his assigns," as sect. 59 of the C. Act, 1881, only bound the real and personal estate of the covenantor, but now by sect. 79 of the L. P. Act, 1925, a covenant relating to land capable of being bound by a covenantor is, unless a contrary intention is expressed, deemed to be made by him on behalf of himself and his successors in title.

(*i*) As to the meaning of "outgoings," see General Remarks above.

(*k*) In many leases the insurance is required to be kept up in the joint names of the lessor and lessee, or their respective representatives, but there is often much practical difficulty in complying with this stipulation in consequence of changes in the ownership of the reversion, and therefore it is generally better omitted. Under sect. 83 of the Fires Prevention (Metropolis) Act, 1774, a lessor of property within the metropolitan district, and even of property without that district, can compel the application of money received under a fire insurance in rebuilding or repairing the building destroyed or damaged by fire. See, as to the operation of the above Act, *Simpson* v. *Scottish, &c. Co.* (1863), 1 H. & M. 618; *Ex parte Goreley* (1864), 4 De Gex, J. & S. 477; *Westminster Fire Office* v. *Glasgow, &c. Society* (1888), 13 App. Cas. 699; *Re Quicke's Trusts*, [1908] 1 Ch. 887; *Sinnott* v. *Bowden*, [1912] 2 Ch. 414; *Sun Insurance* v. *Galinsky*, [1914] 2 K. B. 545. As to the application of insurance money where the policy is kept up under any trust, &c., see sect. 20 of the T. Act, 1925, but these provisions do not affect the rights of the lessor or lessee (sub-sect. (5)). Apart from war risks, it may still be advisable to add the words "**or aircraft**" after "**loss or damage by fire.**"

As to damage by enemy aircraft, see *Enlayde* v. *Roberts*, [1917] 1 Ch. 109; *Upjohn* v. *Hitchens*, [1918] 2 K. B. 48; *Redmond* v. *Dainton*, [1920] 2 K. B. 256.

(*l*) See for a fuller form, Precedent X.

(*m*) See for a fuller form, Precedent X.

PRECEDENT VI.

OF A HOUSE IN A TOWN.

means the user thereof for the purposes of any [such] business or occupation, or so as to cause a nuisance by any under-lessee, tenant, or occupier thereof, or other person whomsoever, and] will use the same [or cause and procure the same to be used] as a private dwelling-house only (*n*); (7) Will not assign, underlet, or part with the possession of the premises or any part thereof (*o*) without the consent in writing of the lessor [provided that such consent shall not be unreasonably withheld (*p*)].

—not to assign or underlet.

Proviso for re-entry.

3. If and whenever (*q*) any part of the said rent shall be in arrear for twenty-one days, whether legally demanded or not, or there shall be a breach of any of the covenants by the lessee herein contained (*r*), the lessor may re-enter upon the premises, and immediately thereupon the said term shall absolutely determine.

Covenant by lessor for quiet enjoyment.

4. The lessor Doth hereby covenant with the lessee, that the lessee, performing and observing all the covenants by the lessee herein contained, may quietly hold and enjoy the premises during

---

(*n*) As to the construction of such a covenant, and what is prohibited by it, see Davidson's Prec. Conv., 3rd ed., vol. v., pt. 1, p. 153, n. (*o*); *Tod-Heatly* v. *Benham* (1888), 40 Ch. D. 80; *Hobson* v. *Tulloch*, [1898] 1 Ch. 424; *Berton* v. *Alliance, &c. Co.*, [1922] 1 K. B. 742; *Re Farrow's Bank*, [1921] 2 Ch. 164; *Atkin* v. *Rose*, [1923] 1 Ch. 522. As to conversion into flats, see *Rogers* v. *Hosegood*, [1900] 2 Ch. 388; *Day* v. *Waldron*, [1919] 88 L. J. K. B. 937; 120 L. T. 634; *Thorn* v. *Madden*, [1925] W. N. 218; 41 T. L. R. 628.

(*o*) As to the importance of adding "or any part thereof," see *Chatterton* v. *Terrell*, [1923] A. C. 578; *Roberts* v. *Enlayde*, [1924] 1 K. B. 335.

(*p*) Or **"shall not be withheld if it shall have been proved to his satisfaction that the proposed assignee or under-tenant is a respectable and responsible person or body."** Such a proviso constitutes a qualification of the covenant, and enables the lessee to assign without consent if the lessor unreasonably withholds his consent or imposes improper terms; but it does not amount to a contract on the lessor's part to give a consent. See *West* v. *Gwynne*, [1911] 2 Ch. 1; *Lewis and Allenby* v. *Pegge*, [1914] 1 Ch. 782; *Goldstein* v. *Sanders*, [1915] 1 Ch. 549; *Mills* v. *Cannon Brewery Co.*, [1920] 2 Ch. 38; *Re Winfrey and Chatterton*, [1921] 2 Ch. 7. A limited company may be within the meaning of the words "a respectable or responsible person" in such a covenant: see *Willmott* v. *London Road Car Co., Ltd.*, [1910] 2 Ch. 525; *Ideal Film, &c. Co.* v. *Nielsen*, [1921] 1 Ch. 575. As to an assignment by a liquidator to a man of straw, see *Cohen* v. *Popular Restaurants*, [1917] 1 K. B. 480. A sub-lease of the whole term amounts to an assignment: *Hallen* v. *Snaeth*, [1923] A. C. 684.

(*q*) It seems desirable to add the words **"and whenever."** See *Shepherd* v. *Berger*, [1891] 1 Q. B. 597.

(*r*) In *Harman* v. *Ainslie*, [1904] 1 K. B. 698, where the lease contained affirmative and negative covenants and a proviso for re-entry on breach by the tenant of "the covenants hereinbefore contained and on his part to be performed," it was held that the landlord could re-enter on breach of the negative covenants only. A lessor who accepts rent knowing of a breach of covenant thereby waives his right to claim a forfeiture (*R.* v. *Paulson*, [1921] 1 A. C. 271), provided that he has taken no step to put an end to the tenancy (*Evans* v. *Enever*, [1920] 2 K. B. 315). See L. P. Act, 1925, sects. 146—148.

the said term, without any interruption by the lessor, or any person claiming through him.

PRECEDENT VI.

OF A HOUSE IN A TOWN.

5. Where appropriate, the expressions "the lessor" and "the lessee" include their respective successors in title. IN WITNESS, &c. (*s*).

Interpretation clause.

VII.

LEASE *of a* HOUSE NEWLY-DECORATED *for a* SHORT TERM *with* COVENANTS *by the* LESSOR *to* REPAIR *the* OUTSIDE *and* INSURE.

PRECEDENT VII.

OF A HOUSE, LESSOR REPAIRING OUTSIDE AND INSURING.

THIS LEASE, made, &c., BETWEEN A., of, &c. (herein called "the lessor"), of the one part, and B., of, &c. (herein called "the lessee"), of the other part, WITNESSETH as follows :—

(*s*) The following is a form of covenant by the lessor giving the lessee an option of purchase, and intended to follow immediately after the covenant for quiet enjoyment. Special stipulations as to the title should be added, if required. It should be borne in mind that inconvenience frequently arises when an option of this kind is exercised after the death of the lessor, and that trustees cannot, unless expressly authorised or when they have the powers of a tenant for life (see S. L. Act, 1925, sect. 51) give such an option (see *Oceanic &c. Co.* v. *Sutherberry* (1880), 16 Ch. D. 236).

Covenant by lessor giving lessee option to purchase freehold.

"IF the lessee shall desire to purchase the fee simple of the premises hereby demised for the sum of £——, and of such desire shall give to the lessor, or leave at his last known place of abode in England, notice in writing on or before the —— day of —— [*six and a half years from the commencement of the term*], then the lessor will [subject to the conditions set out in the Schedule hereto], at the expiration of six calendar months after the day when such notice shall be so given or left, upon payment of the said sum of £——, and of all rent then accrued due, convey and assure the same premises, and the inheritance thereof, in fee simple [except as aforesaid], unto such person or persons as the lessee shall direct."

As to what costs are included, see *Fitzsimmons* v. *Mostyn*, [1904] A. C. 46; *Re Baylis*, [1907] 2 Ch. 54. As to options of this nature, especially as regards the rule against perpetuities, see *Woodall* v. *Clifton*, [1905] 2 Ch. 257; *Worthing* v. *Heather*, [1906] 2 Ch. 532; *Goffin* v. *Houlder*, [1920] 90 L. J. Ch. 488; *Rider* v. *Ford*, [1923] 1 Ch. 541. An option to purchase may be enforced even though under a parol tenancy: see *Brough* v. *Nettleton*, [1921] 2 Ch. 25; and, although collateral to the tenancy itself, may exist so long as the relationship of landlord and tenant continues (see *Rider* v. *Ford*, [1923] 1 Ch. 541, 546), but apart from evidence of intention to the contrary it will not be incorporated in, a yearly tenancy arising from a holding over: *Bradbury* v. *Grimble & Co.*, [1920] 2 Ch. 548. In *Sherwood* v. *Tucker*, [1924] 2 Ch. 42, where a three years' tenancy was extended for a further three years, an intention to extend the option was held to be implied. As to an option of renting adjacent premises, see *County Hotel, &c. Co.* v. *London and N. W. Ry. Co.*, [1921] 1 A. C. 85. See also L. P. Act, 1925, sect. 6, and Wolstenholme & Cherry, &c. Stats., vol. i., p. 161.

PRECEDENT VII.

OF A HOUSE, LESSOR REPAIRING OUTSIDE AND INSURING.

Demise.

Covenant by lessee to pay rent and taxes, &c.

To repair interior:

—and yield up in repair, &c.;

—not to vitiate lessor's insurance.

Proviso for re-entry.

Covenant by lessor for quiet enjoyment;

—to pay specified charges;

to repair exterior;

—and insure;

—produce policy;

—and apply policy money in reinstating property, &c.

Rent to be suspended until damage made good.

1. THE lessor Doth hereby demise unto the lessee [*parcels, exceptions, habendum, and reddendum, as in Precedent VI.*].

2. THE lessee Doth hereby covenant with the lessor that the lessee, during the said term (1) Will pay [*rent*, (2) *rates and taxes, &c., omitting the word* "outgoings" *as in preceding Precedent*]; (3) Will keep the interior of the said premises (except the main timbers) in as good a condition of repair as at present (reasonable wear and tear excepted), and without any alteration (*t*) except such as the lessor shall in writing approve [*remainder of this covenant, and other covenants, as in* (4) (5) (6) *and* (7) *of preceding Precedent*]; (7) Will not do or suffer anything whereby the insurance hereinafter covenanted by the lessor to be effected and kept up shall be vitiated.

3. [*Proviso for re-entry, as in preceding Precedent.*]

4. THE lessor Doth hereby covenant with the lessee [*for quiet enjoyment, as in preceding Precedent*], AND FURTHER that the lessor (1) Will during the term pay the outgoings other than rates and taxes for the time being payable in respect of the premises, AND keep the roof, walls, main timbers [main drainage], and exterior parts of the premises in good condition and repair; (2) Will insure and (unless where such assurance shall be vitiated by any act of the lessee) keep insured the premises against loss or damage by fire [or aircraft] in the sum of £—— at least; AND WILL, on request, produce to the lessee the policy and the current year's premium receipt, AND WILL, if the premises shall be destroyed or damaged by fire [or aircraft], apply all money received by virtue of such insurance in reinstating or repairing the premises and (unless the insurance shall be vitiated as aforesaid) make up any deficiency out of his own money: AND ALSO, that if the premises shall be destroyed or damaged by fire [flood, storm, tempest, or other inevitable accident], then (unless the insurance shall be vitiated as aforesaid), the whole or a proportionate part of the rent according to the nature and extent of the damage done shall be suspended until the premises shall have been reinstated. AND if the premises shall not be reinstated within *six* calendar months afterwards, the lessee may surrender the premises to the lessor, without prejudice nevertheless to any claim by either party in respect of any antecedent breach of any of the covenants and conditions herein contained other than the covenant to reinstate. [*Arbitration clause as in Precedent IV.; Interpretation clause as in Precedent VI.*]. IN WITNESS, &c.

(*t*) The word, in covenants of this nature, is to be limited to alterations affecting the form or structure of the demised building: see *Bickmore* v. *Dimmer*, [1903] 1 Ch. 158.

VIII.

Underlease *at an advanced rent*, subject *to the* Covenants *of the original* Lease.

Precedent VIII.

Underlease.

THIS UNDERLEASE, made, &c., BETWEEN A., of, &c. [*under-lessor*] (herein called "the landlord"), of the one part, and B., of, &c. [*under-lessee*] (herein called "the tenant"), of the other part. WHEREAS, by a Lease (herein called "the head lease"), dated the —— day of ——, and made between [*parties*], ALL THAT [*parcels from original lease*], were demised by the said [*original lessor*] to the landlord, for the term of —— years, from the —— day of ——, 19—, at the yearly rent of £——, and subject to the covenants by the lessee, and conditions therein contained. AND WHEREAS the landlord has agreed with the tenant for an underlease of the premises upon the terms hereinafter expressed. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £——, paid by the tenant to the landlord (the receipt whereof the landlord doth hereby acknowledge).

Recital of Head Lease (*u*).

Agreement for underlease.

1. THE landlord Doth hereby demise unto the tenant ALL the messuage or dwelling-house, coach-house, stables, hereditaments, and premises comprised in and demised by the head lease, TO HOLD unto the tenant, for the term of —— years from the —— day of ——, 19— (*v*); YIELDING therefor, during the term hereby granted, the yearly rent of £——, clear of all deductions, by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, the first such quarterly payment to be made on the —— day of ——, 19— [and the last to be made in advance on the —— day of ——, immediately preceding the expiration of the said term] (*x*).

2. THE tenant Doth hereby covenant with the landlord THAT the tenant, during the term hereby granted (1) Will pay to the landlord the yearly rent hereinbefore reserved on the days and in manner aforesaid [*remainder of covenants* (2) *to* (7) *as in Precedent VI., substituting* "landlord" *and* "tenant" *for*

Covenants by tenant; —to pay rent and taxes;

(*u*) It is convenient to recite the original lease in an underlease, especially where, as here, the under-lessee covenants by reference to the covenants in the lease. An underlease, framed without any recital of the original lease, does not differ in form from a lease, except that the rent is payable to, and the landlord's powers are exerciseable by, the lessor, his personal representatives or assigns, as in the next Precedent, and that in the covenants some reference to the ground landlord and the provisions of the original lease will generally be necessary.

(*v*) This term must expire before that granted by the head lease.

(*x*) See note (*g*) to Precedent VI.

PRECEDENT VIII.

UNDERLEASE.

"lessor" *and* "lessee"]; (8) Will perform and observe all the covenants by the lessee, and conditions contained in the head lease, and henceforth to be performed and observed, except the covenant for the payment of the said yearly rent of £—— thereby reserved; (9) Will keep the landlord indemnified against all actions, expenses, claims, demands, and liability, on account of the breach of the said covenants and conditions (except as aforesaid), or any of them.

—to perform covenants in head lease;

—except covenant for payment of rent;

—to indemnify landlord.

3. [*Proviso for re-entry as in Precedent VI.*].

4. THE landlord Doth hereby covenant with the tenant (1) THAT the tenant performing and observing all the covenants by the tenant herein contained, may quietly hold and enjoy the premises during the term hereby granted without any interruption by the landlord or the superior landlord or any person claiming under either of them; (2) THAT the landlord will, during the term hereby granted, duly pay the said yearly rent of £—— by the head lease reserved; (3) AND WILL at all times keep the tenant, his estate and effects, indemnified against all actions, expenses, claims and demands, on account of the non-payment of the said rent, or any part thereof.

Covenants by landlord for quiet enjoyment;

—to pay original rent;

—to indemnify lessee;

5. THE landlord Doth hereby acknowledge the right of the tenant to production of the head lease, and to delivery of copies thereof, and undertake the safe custody thereof [*Interpretation clause as in Precedent II.*]. IN WITNESS, &c.

—acknowledges right to production of head lease.

IX.

PRECEDENT IX.

COUNTRY HOUSE FURNISHED.

AGREEMENT *to let* COUNTRY HOUSE FURNISHED (*y*).

THIS AGREEMENT, made the —— day of ——, BETWEEN A., of, &c. (herein called "the landlord"), of the one part, and B., of, &c. (herein called "the tenant"), of the other part.

Agreement for tenancy term, rent, &c.

1. The landlord will let, and the tenant will take, ALL THAT dwelling-house, garage, outbuildings, garden, land, and hereditaments, known as——, furnished [an inventory (if any) of the furniture and effects to be signed by both parties (*z*)] for a term of [six] calendar months commencing on the —— day of [March, 19—], and ending on the —— day of [September, 19—], at the weekly rent of £——, payable monthly in

(*y*) This Precedent can, of course, be easily adapted to the letting furnished of a town house.

(*z*) An inventory is not always desired. If preferred, say "**according to the inventory annexed to this agreement.**"

advance (*a*), the first payment of £—— to be made on possession being taken, the second and every subsequent payment of the same amount on the —— day of every month, and the last payment on the —— day of [August, 19—] (*b*).

Conditions to be performed by tenant.

2. The tenant will :—

(a) Pay the said rent to the landlord in manner aforesaid;

(b) Replace and make good all breakages, deficiencies, and damage to the furniture, fixtures, fittings, and effects in the said dwelling-house and premises which may happen during the period of the tenancy (reasonable use and wear and damage by accidental fire excepted);

(c) At the expiration of the said tenancy to deliver up to the landlord possession of the premises with all the said furniture and effects and in the same rooms in which the same now are in as sound, perfect, and clean a condition as at the commencement of the tenancy (except as aforesaid);

(d) Disinfect the premises to the satisfaction and free of expense to the landlord in the event of any infectious disease occurring on the premises during the tenancy;

(e) Not assign or underlet the premises, or any part thereof, nor remove nor permit to be removed from the premises the said furniture and effects, or any part thereof;

(f) Permit any person (with approved credentials) presenting an order to view the premises made by any authorised agent of the landlord to enter and view the same at any reasonable time in the day on previous notice being given to the tenant by such agent, and to forward such order to the landlord (*c*);

(g) Pay for all coal, coke, and anthracite left on the premises at a valuation, and pay for the gas and electric light used during the tenancy, and also the proper proportion of the telephone rental and all calls which the tenant shall make during the tenancy;

(h) Use the central heating, independent boiler, gas range, and kitchen range with proper care, and be responsible for any negligent use thereof;

(*a*) As the landlord is paying the outgoings, it is usual for the tenant to pay monthly or quarterly in advance according to the length of the tenancy.

(*b*) The monthly payments are here supposed to be made on the corresponding day of the commencement of the tenancy. As the rent is weekly, the total may be divided into six equal payments. This is generally more convenient. For example twenty-seven weeks at ten guineas a week is £283 10s., and each monthly payment would be £47 5s.

(*c*) This clause may be useful if the landlord contemplates a sale, but would otherwise hardly be required in the case of a short tenancy.

PRECEDENT IX.

COUNTRY HOUSE FURNISHED.

(i) Keep the drains and wells properly cleansed and in good order;

(j) Keep the electric lighting system in good order, and at the cost of the tenant repair any fuse and replace any bulbs which are out of order, but not so as to render the tenant liable on account of defective wiring;

(k) Supply the tenant's own china, glass, linen, and kitchen utensils, and may bring in carpets, furniture, and pictures, but any effects brought by the tenant on to the premises shall be at the sole risk of the tenant (*d*);

(l) Not make any alteration in the structure of the house without the consent of the landlord, but may at the cost of the tenant do internal decorations.

Conditions to be performed by landlord.

3. The landlord will :—

(a) Insure the house, buildings, and the furniture belonging to him against loss or damage by fire (*e*);

(b) Pay all rates [including water rate or charges], taxes, insurance, and other outgoings payable in respect of the premises, but not gas, electricity, or telephone expenses during the tenancy;

(c) Keep the garden in good order, and continue to employ and pay his own gardener, the fruit, potatoes, and other vegetables being retained by the landlord, subject to the use thereof by the tenant, for consumption by him and his staff.

Right of re-entry.

4. In case of non-payment of rent or breach of any condition herein by the tenant, the landlord may re-enter and take possession of the premises without prejudice to the right to recover all rent in arrear and any damages in respect of such breach. AS WITNESS, &c.

X.

PRECEDENT X.

OF A HOUSE AND FURNITURE.

LEASE *of a* HOUSE *and* FURNITURE *for a* TERM DETERMINABLE *at the option of the tenant* (*f*).

THIS LEASE, made, &c., BETWEEN A., of, &c. (herein called "the lessor"), of the one part, and B., of, &c. (herein called "the lessee"), of the other part, WITNESSETH as follows :—

(*d*) The provision of china, glass, linen, &c., is generally a matter of special arrangement.

(*e*) This clause is perhaps not usual, but is unobjectionable, if required by the tenant, as the landlord for his own security would insure.

(*f*) The lessor is supposed in this Precedent to be himself a leaseholder, and the lease is therefore really an underlease, as to which see note to Precedent VIII.

PRECEDENT X.

OF A HOUSE AND FURNITURE.

1. The lessor doth hereby DEMISE unto the lessee, ALL THAT messuage or dwelling-house, with the coach-house and stables at the back thereof, situate and numbered ——, in —— Street, in the Parish of ——, in the County of ——, TOGETHER with the furniture and effects specified in the Schedule hereto (*f*), TO HOLD the premises unto the lessee, for the term of twenty-one years, from the —— day of ——, 19—; YIELDING therefor [*reservation of rent payable quarterly as in Precedent VIII.*].

Demise.

Parcels.

Furniture.

2. The lessee Doth hereby covenant with the lessor THAT the lessee during the said term (1) WILL pay [*covenants to pay the rent, rates, &c., as in* (1) *and* (2) *of Precedent VI.*]; (3) WILL, during the said term, at his own cost, well and sufficiently repair, maintain, and keep the said messuage or dwelling-house, coach-house, and stables (hereinafter generally referred to as the "house and stabling") and all new fixtures and additions thereto in good condition and repair; AND in particular will once at least in every three years of the said term, paint with three coats of good oil colours all the outside wood, iron, and stucco work previously painted, AND ONCE at least in every seven years of the said term, clean and re-point the outside stone and brickwork; AND ONCE at least in every seven years of the said term paint with two coats of good oil colours all the inside wood, iron, and other work previously painted [and afterwards varnish the parts usually varnished, and also wash, distemper, and whiten the ceilings, and re-colour and re-paper the walls previously coloured or papered, in the same style as at present]; (4) WILL not, without the previous licence in writing of the lessor, make any addition to the house and stabling, or any alteration (*g*) therein or in the elevation thereof; (5) WILL preserve the furniture and effects specified in the said Schedule from being destroyed or damaged (reasonable wear and tear thereof excepted), AND WILL replace with articles of a similar kind and of equal value such parts of the said furniture and effects as shall have been destroyed or damaged; (6) WILL permit the lessor, [twice in every year] during the said term, to enter upon the house and stabling to view the condition thereof, and of all wants of repair then found, to give or leave a notice in writing for the lessee to amend the same; (7) WILL at his own expense, within three calendar months from such notice, amend the same accordingly, and pay to the lessor all costs, charges

Covenants by lessee to pay rent, rates, &c., and to repair.

To paint outside once in three years,

and inside once in seven years.

Not to make alterations.

To preserve furniture, and to replace.

To permit lessor to enter and view and give notice of want of repair.

To repair on notice.

(*f*) That a furnished house is reasonably fit for human habitation is implied by law: see *Collins* v. *Hopkins*, [1923] 2 K. B. 617. As to a like implication in the case of unfurnished houses of small rental value, see above, p. 264, note (*y*). See also the preceding Precedent.

(*g*) See note (*t*) to Precedent VII.

PRECEDENT X.

OF A HOUSE AND FURNITURE.

and expenses incurred by him of or incident to such notice (*h*); (8) WILL, during the said term, at the like expense, keep the premises insured (*i*) against loss or damage by fire in such office as the lessor shall approve, in the sums following, at the least, that is to say, the house and stabling in the sum of £——, and the furniture and effects specified in the said Schedule, or substituted for the same, in the sum of £——; AND WILL [*produce the policy and expend insurance money, as in covenant* (3) *of Precedent VI.*]; (9) WILL not remove any of the furniture or effects specified in the said Schedule or substituted therefor, from the house and stabling without the previous licence in writing of the lessor; (10) WILL not [*assign, &c., without licence, as in covenant* (7) *of Precedent VI.*]; (11) WILL at the expiration or sooner determination of the term deliver up to the lessor the premises (including the furniture and effects specified in the said Schedule or substituted therefor), with all new fixtures and additions thereto in such good condition and repair as aforesaid.

To keep the premises insured.

Not to remove furniture.

Not to assign, &c.

To deliver up the premises.

3. [*Proviso for re-entry, as in Precedent VI.*]

Power for lessee to determine lease on giving notice.

4. The lessee may at the end of the seventh or fourteenth year of the said term determine the same upon giving to or serving upon the lessor in the manner prescribed by law (*k*) six calendar months' previous notice (*l*) in writing of the intention so to do, and upon paying the rent and performing and observing the covenants by the lessee herein contained up to the day of the said term being so determined (*m*). [*Covenant by the lessor for quiet enjoyment, as in Precedent VI., down to* "interruption," *and proceeding* "by the lessor or —— of —— [*the ground landlord*] or any person claiming under either of them" (*n*). *Interpretation clause, as in Precedent VI.*] IN WITNESS, &c.

SCHEDULE—*Furniture and other effects.*

(*h*) As to relief by the Court against notice to effect decorative repairs, see L. P. Act, 1925, sect. 147.

(*i*) See note (*k*) to Precedent VI.

(*k*) See L. P. Act, 1925, sect. 196.

(*l*) No particular form of notice is required, but it must be clear and unambiguous: a notice in the alternative is bad. See *Bury* v. *Thompson*, [1895] 1 Q. B. 696; *May* v. *Borup*, [1915] 1 K. B. 830; *Norfolk C. C.* v. *Child*, [1918] 2 K. B. 805. See also NOTICES, Precedent II.

(*m*) See *Burch* v. *Farrow's Bank*, [1917] 1 Ch. 606; *Kirklinton* v. *Wood*, [1917] 1 K. B. 332.

(*n*) Unless the lessor expressly covenants to pay the rent and perform the covenants under his own original lease, the covenant for quiet enjoyment should be extended as in the text to the acts of the ground landlord and those claiming under him.

XI.

Lease *of a* Farm (*o*).

PRECEDENT XI. — OF A FARM.

THIS LEASE, made, &c., BETWEEN A., of, &c. (herein called "the landlord"), of the one part, and B., of, &c. (herein called "the tenant"), of the other part, WITNESSETH as follows :—

Demise.

1. The landlord Doth hereby demise unto the tenant ALL THAT messuage or farmhouse buildings, land, and hereditaments, in the Parish of ——, in the County of ——, called —— Farm, particulars whereof are specified in the Schedule hereto, EXCEPT and reserved, out of this demise, all timber and other trees, and the right to enter and cut and remove the same, TO HOLD the premises, except as aforesaid, unto the tenant, for the term of —— years from the date of these presents [or in the absence of notice by either party as prescribed by sect. 23 of the Agricultural Holdings Act, 1923, for such extended tenancy as therein mentioned, which term or such extended tenancy is hereinafter referred to as "the tenancy"], YIELDING therefor, during the tenancy, the yearly rent of £——, clear of all deductions, by equal half-yearly payments, on the —— day of ——and the —— day of —— in every year, the first of such payments to be made on the —— day of —— next [and the last to be made in advance on the —— day of ——, immediately preceding the expiration of the tenancy] (*p*).

Exception of timber.

Covenants by lessee;

2. The tenant Doth hereby covenant with the landlord that the tenant, during the tenancy (1) WILL [*pay rent, rates* (*q*), *&c., and keep insured* "the farmhouse and buildings," *and produce policy and apply insurance money, as in the covenants* (1) (2) *and* (3) *of Precedent VI., substituting* "landlord" *for* "lessor"]; (4) WILL keep the farmhouse and buildings, and all things in and about the same, and all fences, ditches, drains,

to keep premises in good condition;

(*o*) This is a Precedent of a simple farming lease, and applicable to a taking from any time in the year. The two following Precedents contain different forms of the stipulations usually inserted in farming leases of a more stringent character, those in the next Precedent being adapted to a taking from Lady Day. Precedent XIII. is adapted for a Michaelmas take.

In the case of a tenancy of a holding made after 1920, for a term of two years or upwards (as in this Precedent), the tenancy will not terminate on the expiration of the term, but will continue as a tenancy from year to year on the terms of the original tenancy, unless not less than one year nor more than two years before the date fixed for the expiration of the term a written notice has been given by either party to the other of his intention to terminate the tenancy, notwithstanding any agreement to the contrary: see Agr. H. Act, 1923, sect. 23. See *Edell* v. *Dulieu*, [1924] A. C. 38, where the lease was made before 1921.

(*p*) See note (*g*) to Precedent VI.

(*q*) See note (*b*) to next Precedent.

PRECEDENT XI.

OF A FARM.

watercourses, gates, fixtures and things upon or about the said farm and lands, in good condition and repair, and without any alteration, except such as the landlord shall approve; (5) WILL

and properly cultivated;

cultivate, manure, and manage the said farm and lands in a fair and proper manner according to the rules of good husbandry (*r*); (6) WILL

not to break up pasture or meadow;

not convert into arable land or otherwise break up any land now in pasture or meadow, without the consent of the landlord (*s*); (7) WILL, at the expiration or sooner determination of the tenancy, yield up the same premises in such good condition and repair, and in fair and proper order, as aforesaid, unto the landlord; (8) AND THAT

and yield up at end of term;

and that landlord may enter to inspect.

the landlord and his agents, surveyors, and workmen, may at all reasonable times during the tenancy, enter upon the premises to inspect the same, and to cut and remove timber and other trees. [*Covenant against assignment; proviso for re-entry; covenant by landlord for quiet enjoyment; and interpretation clause, as in Precedent VI., substituting* "landlord," "tenant," *for* "lessor," "lessee."] IN WITNESS, &c.

SCHEDULE—*Particulars of* —— *Farm.*

XII.

PRECEDENT XII.

OF A FARM BY TENANT FOR LIFE.

LEASE *of a* FARM *to* TWO LESSEES *by a* TENANT *for* LIFE *of a* SETTLEMENT *created by a* WILL (*t*).

THIS LEASE, made the —— day of ——, BETWEEN A., of, &c. [*tenant for life and estate owner in fee simple*] (herein called "the reversioner," which expression, where appropriate, includes the person or persons for the time being entitled in reversion immediately expectant on the term hereinafter granted to the hereditaments hereinafter described and his or their successors in title), of the one part, and B., and C., both of ——, farmers and co-partners (herein called "the lessees," which

(*r*) As to the meaning of the expression "rules of good husbandry," see Agr. H. Act, 1923, sect. 57, sub-sect. (1). See also *Williams* v. *Lewis*, [1915] 3 K. B. 493; *Wedd* v. *Porter*, [1916] 2 K. B. 91; *Clarke-Jervoise* v. *Scutt*, [1920] 1 Ch. 382; and as to compensation for deterioration, see Agr. H. Act, 1923, sect. 10, and *Re Arden* v. *Rutter*, [1923] 2 K. B. 865.

(*s*) As to breaking up of meadow land or pasture, see Agr. H. Act, 1923, sect. 49, sub-sect (1), and *Clarke-Jervoise* v. *Scutt*, [1920] 1 Ch. 382.

(*t*) Compare Precedent XIV., where the settlement is not referred to. In most cases perhaps the most usual course would be not to recite the title, but merely to signify that the lease is granted under the S. L. Act powers, unless additional and larger powers are conferred by the settlement, and these powers are exercised.

PRECEDENT XII.

OF A FARM BY TENANT FOR LIFE.

expression includes their successors in title), of the other part, WITNESSETH as follows :—

1. The reversioner, in exercise of the power for this purpose conferred on him by the Settled Land Act, 1925, by virtue of the settlement created by the Will, dated the —— day of ——, 19—, of G. B. deceased, who died on the —— day of ——, and whose said Will was proved in the —— Registry on the —— day of ——, 19—, by X. and Y., the executors therein named, and of a Vesting Assent dated the —— day of —— under the hands of the said X. and Y., and of all other powers, statutory or otherwise (*u*), Doth hereby DEMISE unto the lessees, ALL THAT [*parcels, as in preceding Precedent*]. EXCEPT and reserving unto the reversioner all timber and other trees, wood, and underwood, now, or at any time during the term hereby granted, growing upon the premises, and all mines and minerals lying in or under the same, with liberty for the reversioner, and his lessees, agents, and workmen, at all times, with or without horses, carts and carriages, to enter upon the premises, and every part thereof, and to fell, stub up, and carry away the said timber, trees, and underwood, and to search for, work, dress, manufacture, render merchantable, and carry away the said mines and minerals, and for the purposes aforesaid to do all such acts and things as he or they shall think necessary or expedient; AND in particular to occupy and use, exclusively or otherwise, so much of the land hereby demised as he or they shall reasonably require for any such purpose, the reversioner compensating the lessees by abatement of rent or otherwise, according to the circumstances, for any damage or injury sustained by them; AND ALSO, except and reserving unto the reversioner all the game upon the premises, with liberty for him, and his servants, friends, and all other persons by his permission, to preserve and hunt, kill, take, or destroy the same upon the premises, at all times during the term hereby granted, as regards game other than hares and rabbits exclusively, and as regards hares and rabbits concurrently with any other person or persons for the time being legally entitled to the same or the like right (*y*). TO HOLD the

Parcels.

Exception —of timber and minerals,

—with liberty to enter and work,

—and to use land on paying compensation.

Exception of game (*x*) with exclusive liberty to landlord to take.

Habendum.

(*u*) As to the power of leasing conferred on persons having the powers of a tenant for life by the S. L. Act, 1925, see note (*c*) to Precedent XIV.

(*x*) Under sect. 6 of the Rating Act, 1874, the tenant may be entitled, in the absence of stipulation, to deduct from his rent a proportion of rates in respect of the right of sporting here reserved. See *Devonshire* v. *Barrow &c. Co.* (1877), 2 Q. B. D. 286; *Chaloner* v. *Bolckow*, (1878), 3 App. Cas. 933; *Alton Urban Council* v. *Spicer*, [1904] 1 K. B. 678. See p. 280 note (*b*).

(*y*) See the Ground Game Act, 1880. The Act applies to owning occupiers as well as to tenants : *Anderson* v. *Vicary*, [1900] 2 Q. B. 287; but sect. 6, which prohibits night shooting, &c., applies only to occupying tenants and their licensees : see *Leeworthy* v. *Rees* (1913), 109 L. T. 244; and as to agree-

PRECEDENT XII.

OF A FARM BY TENANT FOR LIFE.

premises (except as aforesaid) UNTO the lessees, for the term of —— years from the 25th day of March, 19— (*z*), YIELDING therefor during the said term the yearly rent of £——, clear of all deductions by equal half-yearly payments on the 25th day of March and the 29th day of September in every year, the first of such payments to be made on the 29th day of September, 19—, AND ALSO yielding by like half-yearly payments the additional yearly rent of £10 for every acre (and so in proportion for a less quantity) of pasture or meadow land which shall during the said term be broken up or converted into tillage without the previous consent of the reversioner; THE FIRST or only payment of the said additional rent to be made on such of the said half-yearly days of payment as shall happen next after the same shall become payable, and the payment thereof, if reserved yearly, to continue thenceforth for the residue of the said term (*a*).

Reddendum of certain yearly rent,

—and of additional penal rent.

Covenants by lessees,

—to pay the rents,

—rates and taxes;

—to repair (*c*);

2. The lessees do hereby jointly and severally covenant with the reversioner, that the lessees (1) WILL pay to the reversioner the said certain yearly rent of £——, and, if the same shall become payable, the said additional rent, at the times and in manner aforesaid, clear of all deductions except for land-tax (*b*); (2) [*will pay rates, &c.*, "except land-tax," *as in Precedent VI.*]; (3) WILL, during the said term at their own expense, well and sufficiently maintain, cleanse, and keep in good condition and repair, the said messuage or farm-house, and any other buildings now or at any time during the said term standing or erected

---

ments under sect. 3, in contravention of the occupier's right to destroy ground game, see *Sherrard* v. *Gascoigne*, [1900] 2 Q. B. 279; *Stanton* v. *Brown*, [1900] 1 Q. B. 671. The Act has been amended by the Ground Game (Amendment) Act, 1906. As to the right of a tenant of a holding to compensation for damage to crops from game, where, as in this Precedent, the right to kill and take is vested exclusively in the landlord, see Agr. H. Act, 1923, sect. 11, and *Farrer* v. *Nelson* (1885), 15 Q. B. D. 258; *Thomson* v. *Galloway*, [1919] S. C. 611; 56 Sc. L. R. 448.

(*z*) As to the extension of tenancies for a term of years in the absence of notice by either party, see sect. 23 of the Agr. H. Act, 1923, the effect of which is stated in note (*o*) to the preceding Precedent, in which it will be seen express reference to the section is made in the form, which, though perhaps useful as a reminder to the parties of the true nature of the tenancy, is not of course essential.

(*a*) See note (*s*) at p. 278.

(*b*) If no deduction in respect of the right of sporting is to be allowed, add, "and in particular without any deduction, under the Rating Act, 1874, in respect of the right of sporting."

(*c*) The special form of this covenant, and of the subsequent covenants to insure and deliver up at the end of the lease, is due to the previous provision enabling the lessor to resume possession of parts of the land during the demise. In a lease not containing such a provision, these covenants would be similar to the corresponding covenants in the next Precedent.

PRECEDENT XII.

OF A FARM BY TENANT FOR LIFE.

upon the premises, and all gates, rails, fences, dikes, drains, water-courses, and appurtenances to the premises (except such as shall be hereafter erected or made by the reversioner, or any other person, under or by virtue of any reservation herein contained); (4) WILL farm and cultivate the premises according to the rules of good husbandry; (5) WILL at all times during the said term, keep upon the premises, cattle, horses, sheep or other live stock, to the value of £—— at the least; (6) WILL, during the first seven years of the said term, expend in draining the premises in such manner as the reversioner or his agents shall approve, £—— at the least; (7) WILL, at their expense, during the first seven years of the said term, expend in the erection of convenient and substantial barns, stables, sheds, or other buildings, on the premises £—— at the least; (8) WILL permit the reversioner, and his agents, servants, and workmen [*to enter and view condition of premises, give notice of want of repair; and repair upon notice; adapt from Precedent X.*]; (9) WILL keep insured against loss or damage by fire, in such office as the reversioner shall approve, to the amount of two-thirds of their full value at the least, the said messuage or farm-house, and all other buildings, now or at any time hereafter erected by the lessees upon the said premises; AND WILL, when required, produce to the reversioner, or his agent, the policy of such insurance, and the current year's receipt for the premium thereon; (10) WILL permit the reversioner, or the incoming tenant, and his or their bailiffs, servants, and workmen, from and after the 11th day of November immediately preceding the expiration of the said term to enter upon the said premises, and plough and cultivate the fallow land, as he or they shall think proper; AND for the purpose aforesaid to use and occupy such stables and sheds as he or they shall reasonably require for the accommodation of horses, carts, and other implements of agriculture without any charge in respect thereof; (11) WILL, at the expiration or sooner determination of the said term, deliver up the premises and all fixtures and additions thereto, together with any new buildings or erections thereon built or erected by the lessees (except such fixtures and buildings as the lessees shall by law be entitled to remove), in such condition and repair as aforesaid, and in all respects in such state and condition as shall be consistent with the due performance of the covenants hereinbefore contained; (12) AND ALSO

—to cultivate;

—to keep live stock on the premises;

—to expend money in draining,

—and in buildings.

To permit reversioner to view;

—to keep buildings insured (*d*),

—and to produce policy.

To permit reversioner to cultivate near end of term.

To deliver up premises with new fixtures or buildings at end of term (*e*);

—and to sell to reversioner,

(*d*) See note (*k*) to Precedent VI.

(*e*) As to this clause and the right of the tenant to remove fixtures or buildings, see *Premier Dairies* v. *Garlick*, [1920] 2 Ch. 17; *Re Harvey and Mann* (1920), 89 L. J. K. B. 687; and Agr. H. Act, 1923, sect. 22.

PRECEDENT XII. — OF A FARM BY TENANT FOR LIFE.

or incoming, tenant, manure, &c.

will sell to the reversioner, or the incoming tenant, at a fair market price, all the dung and manure produced upon the premises during the last year of the said term, and also all straw, hay, and other fodder not consumed before the expiration or sooner determination of the said term; AND WILL permit the same to be carted out or used or consumed on the premises by the purchaser at usual and convenient times and places.

3. [*Proviso for re-entry as in Precedent VI., substituting* "lessees" *for* "lessee" *and* "reversioner" *for* "lessor"].

Covenant for quiet enjoyment,

4. The reversioner Doth hereby covenant with the lessees (1) THAT the lessees, performing and observing all the covenants by the lessees herein contained, may hold and enjoy the premises, during the said term, without any interruption by the reversioner; AND (2) THAT the reversioner will during the said term pay the land-tax payable in respect of the premises. IN WITNESS, &c.

—and for payment of land tax.

SCHEDULE—*Particulars of —— Farm.*

XIII.

PRECEDENT XIII. — OF A FARM FROM YEAR TO YEAR.

LEASE *of a* FARM *from* YEAR *to* YEAR (*f*).

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN A., of, &c. (herein called "the landlord"), of the one part, and B., of, &c. (herein called "the tenant"), of the other part.

Demise.

THE LANDLORD agrees to let, and the tenant agrees to take—

Parcels.

Parcels.

THE MESSUAGE farm and lands called —— Farm, situate in the Parish of ——, in the County of ——, and consisting of the following particulars (that is to say) [*here set out the particulars in schedule form or otherwise*].

Exception of minerals,

EXCEPT (i.) all quarries, mines, stone, gravel, sand, clay, brick-earth, and other minerals (herein collectively called "minerals"): AND (ii.) ALL timber and other trees, pollards and saplings (herein collectively called "timber") [*here insert any other exceptions*].

—and trees.

Reservations.

Reservation of liberty to work mines;

RESERVING unto the landlord and all persons authorised by him: (i.) LIBERTY to search for, dig, get, dress, make merchant-

(*f*) This Precedent is intended as a form of general applicability, but especially for a Michaelmas holding.

able, and carry away minerals, and to sink all necessary pits and shafts, and make and erect all necessary erections, machinery, roads, and other conveniences and things for the purpose : (ii.) LIBERTY to fell, cut, carry away, and dispose of timber and lay the same upon the land until sale or removal. MAKING to the tenant reasonable compensation for all damage occasioned by the exercise of the liberties hereinbefore reserved : (iii.) LIBERTY to resume (*g*) any part of the said premises for the purpose of exchanging intermixed or detached lands, or of consolidating farms, or for any of the purposes specified in section 27 of the Agricultural Holdings Act, 1923; MAKING to the tenant reasonable compensation, either by the substitution of other lands or by reduction of rent, as the parties may agree : (iv.) LIBERTY to enter for the purpose of effecting repairs, building, planting, draining, and improving the premises, cutting and carrying away timber, and of diverting and altering roads and watercourses : AND (v.) THE EXCLUSIVE right (subject to the Ground Game Acts, 1880 and 1906) of shooting, sporting, fishing, and preserving game, rabbits, wild-fowl, and fish (*h*).

—to fell trees;

—making compensation;

—to resume land for certain purposes;

—making compensation.

Entry by landlord, to make improvements.

And exclusive right of sporting.

Term.

FOR one year from the 29th day of September, 19—, and so on from year to year until the demise shall be determined by either party giving to the other previous notice in writing, to take effect at the expiration of twelve [calendar] months from the end of the then current year of tenancy, unless previously determined under the power of re-entry hereinafter contained, and subject to the liberty to resume any part of the premises hereinbefore reserved (*i*).

Term.

Rents.

YIELDING therefor during the demise the rents or sums following clear of all deductions : (i.) THE CERTAIN yearly rent of £——, by equal half-yearly payments on the 25th day of March and the 29th day of September in every year, the first such payment to be made on the 25th day of March, 19—, and the last in advance on the —— day of —— immediately

Reddendum;

—of certain yearly rent;

(*g*) See Agr. H. Act, 1923, sect. 27, which enables land to be resumed for various other purposes, and empowers the tenant to treat a notice to resume part as equivalent to notice to quit the whole, but limits the rights of the tenant, where notice by the landlord is given "in pursuance of a provision in that behalf contained in the contract of tenancy."

(*h*) See note (*y*) to Precedent XII.

(*i*) See Agr. H. Act, 1923, sect. 25. The reasons for determining the tenancy should be given. See also, as to the statutory restriction of notices to quit on the occasion of a sale, Agr. H. Act, 1923, sect. 26.

PRECEDENT XIII.

OF A FARM FROM YEAR TO YEAR.

preceding the expiration of the said term. (ii.) THE ADDITIONAL CONTINGENT yearly rents following: £—— for every acre (and so in proportion for any less quantity) of land now meadow or pasture which shall be broken up or converted into tillage [*here insert any additional yearly rents that may be agreed upon* (*k*).] THE SAID additional rent [*or* rents] to be paid half-yearly on the days aforesaid, and the first payment thereof respectively to be made on such of the said half-yearly days as shall first occur after the event on which such rent is [*or* rents are respectively] made payable, and the last in advance on the —— day of —— immediately preceding the expiration of the tenancy.

—and additional contingent yearly rents;

—for ploughing up meadow;

—when to be paid.

Agreements by Tenant.

Agreements by tenant;

THE tenant hereby agrees with the landlord as follows:

Payments.

—to pay compensation;

(i.) To pay to the landlord or, with the consent in writing of the landlord, to the outgoing tenant before going into occupation the amount for compensation for improvements and for expenses incident to any arbitration or valuation in connection with such compensation which the landlord has paid or is liable to pay to the outgoing tenant. AND payment to the landlord shall be deemed to be a payment to the outgoing tenant within the meaning of sect. 6 of the Agricultural Holdings Act, 1923.

—rent;

(ii.) To pay the said certain yearly rent and (if the same shall become payable) the said additional rent [or rents] at the times and in manner hereinbefore appointed for payment thereof, clear

—and taxes;

of all deductions. (iii.) To pay all existing and future taxes, rates, assessments and outgoings (*l*) for the time being payable either by landlord or tenant in respect of or charged upon the premises, except landlord's property tax and [land-tax and tithe rentcharge (if any)].

Residence.

—to reside;

To reside personally in the said messuage, unless otherwise authorised by the landlord or his agent.

Repairs.

—to repair;

To keep the said messuage, together with all fixtures and additions thereto, and all buildings (except the main timbers, tiles, roofs, and walls), and also the thatched roofs, pumps,

(*k*) Before the Agricultural Holdings Act, 1908, it was usual to reserve penal rents in respect of improper cropping and disposal of produce. But sects. 29 and 30 of the Agr. H. Act, 1923, appear to render such a reservation practically useless.

(*l*) As to "outgoings," see General Remarks above, p. 251.

gates, stiles, rails, fences, walls, bridges, dams, floodgates, roads, footpaths, ditches, soughs, and watercourses in good repair and condition (having regard to the record (if any) made under the provisions of sect. 32 of the Agricultural Holdings Act, 1923), the landlord allowing timber in the rough, bricks, lime, and straw for thatching, but the tenant doing or paying for the cartage (*m*).

Insurance.

(i.) To insure the said messuage and all buildings [in the joint names of the landlord and tenant (*n*)] in the —— Insurance Office, or some other insurance office approved of by the landlord, for the sum of £—— at least. (ii.) To produce, when required by the landlord or his agent, the policies of insurance and receipts for premiums and other sums payable for effecting and keeping on foot the said insurance. AND (iii.) To expend all money received in respect of such insurance in repairing and reinstating the premises damaged or destroyed by fire.

—to insure;

—to produce policies and premium receipts;

—and expend money in reinstating premises;

Cultivation and Management.

(i.) To cultivate the said farm and lands according to the rules of good husbandry and so as not to injure or deteriorate the same or any part thereof (*o*). (ii.) AND in particular during the year before the expiration of the tenancy or after notice to quit has been given or received not to grow crops of the same kind in immediate succession (*p*). (iii.) To purchase and lay upon the said lands every year such lime, muck, and other manure as shall be proper for the sufficient cultivation thereof. (iv.) ONCE a year to brush and trim the hedges requiring to be brushed and trimmed, and to lay and plash such as require to be laid and plashed, and to remove or burn on the ground forthwith all the brushings and trimmings. (v.) ONCE a year to cleanse the ditches, gutters, and watercourses, and in case of default thereof in the last year, to permit the landlord and all persons authorised by him to enter and cleanse the said ditches, gutters, and watercourses, and to repay the expenses thereof. (vi.) To preserve the timber from being injured or destroyed, and not to cut, top, or lop any of the same except pollards usually topped. (vii.) To weed and defend the young quick in

—to farm in a husband-like manner;

—and not to grow same crop in succession during last year of tenancy;

to purchase lime;

—to brush hedges;

—to cleanse ditches;

—to preserve timber;

(*m*) This clause does not imply a covenant by the landlord to supply materials: see *Westacott* v. *Hahn*, [1918] 1 K. B. 495. See, however, express stipulation by landlord at p. 287, below.

(*n*) See note (*k*) to Precedent VI.

(*o*) See note (*r*) to Precedent XI.

(*p*) The insertion of express provisions as to the mode of cropping and the disposal of produce, except as regards the last year of the tenancy, appears to be of doubtful utility, in consequence of the freedom conferred upon the tenant by sect. 30 of the Agr. H. Act, 1923.

PRECEDENT XIII.

OF A FARM FROM YEAR TO YEAR.

the fences. (viii.) To level all mole-hills and ant-hills, and endeavour to destroy all moles, rats and other vermin. (ix.) PREVIOUSLY to the month of August in every year to pull up or mow all thistles, dock, nettles, and other weeds growing whether upon the said premises, or upon the roads or waste lands adjoining [*here insert any other special stipulations relating to cultivation and management* (*q*)].

—to weed quick;

—to level ant-hills;

—to mow thistles;

Stipulations in favour of the Landlord.

—to permit the landlord to enter to view (*r*);

(i.) To permit the landlord and his agents and others in his employ at all reasonable times during the tenancy to enter to view the state and condition of the premises. (ii.) To preserve (subject to the Ground Game Acts, 1880 and 1906) all game (*rr*) [and fish] exclusively for the landlord, and all persons authorised by him; and to warn off trespassers. (iii.) To permit the landlord to bring any action or other proceeding in the name of the tenant against any person or persons who may trespass in pursuit of game, [or fish] on indemnifying the tenant against all expense occasioned thereby.

—to preserve game;

—to permit landlord to sue trespassers in tenant's name;

Acts prohibited.

—not to break up meadow or pasture;

(i.) NOT to break up or convert into tillage any of the meadow or pasture lands, or mow any part thereof more than once in any year, but to cultivate and manure such of the said land as is meadow, pasture or orchard in a husbandlike manner, and preserve the fruit trees from damage, and plant and protect young trees as required for replacing old ones. (ii.) NOT to cut down, lop, or destroy any timber. (iii.) NOT during the last six [calendar] months of the tenancy to let off any herbage, grass, root-crops, or other keep, nor to agist any cattle or other animals without the previous licence in writing of the landlord or his agent (*s*) [*here insert any other prohibited acts*]. AND (iv.) NOT at any time to assign, underlet, or part with the possession of any part of the said premises without the previous licence in writing of the landlord.

—not to cut trees, &c.;

—not to let off keep during the last six months;

—not to assign or underlet;

Expiration of the Lease.

—to permit landlord or incoming tenant to enter to sow seeds;

(1.) To permit the landlord or the incoming tenant to enter to sow with the spring or Lent corn in the last year of the tenancy, clover, or grass seeds, and to give to the landlord ten

(*q*) As to the right of a tenant to compensation for improvements which by the terms of his tenancy he is bound to make, see Agr. H. Act, 1923, sect. 1, and *Huckell* v. *Saintrey*, [1923] 1 K. B. 150.

(*r*) This power is expressly conferred by sect. 28 of the Agr. H. Act, 1923.

(*rr*) See p. 279, note (*y*).

(*s*) See *Richards* v. *Davies*, [1921] 1 Ch. 90 (agistment).

days' previous notice in writing of the intention of sowing such spring or Lent corn. (ii.) To deliver up the premises and all buildings, fixtures, and additions thereto (except such as the tenant may by law be entitled to remove, and which the landlord shall not have elected to purchase (*t*)), in such good repair as aforesaid, and in all respects in such state and condition as shall be consistent with the due performance of the agreements herein contained, and with the record (if any) of their condition under the provisions of sect. 32 of the Agricultural Holdings Act, 1923. (iii.) To leave all the unspent hay, artificial hay, straw, clover, fodder, turnips, or other root or green crop, muck, dung, and compost for the benefit of the landlord or the incoming tenant, who shall pay an agreed price (or in case of difference to be settled by arbitration) for the hay, artificial hay, straw, clover, turnips, root, or other green crop.

—to deliver up at the end of the demise;

—to leave unspent hay and manure (*u*).

Power of Re-entry.

IF and whenever any part of the several rents hereinbefore reserved shall be in arrear for twenty-one days, whether the same shall have been legally demanded or not, or if and whenever the tenant (*x*) shall be adjudicated bankrupt, or a receiving order in bankruptcy (*y*) shall be made against him or he shall make any composition or arrangement with or for the benefit of his creditors, or any execution shall be levied upon his goods or chattels or upon the premises, or if and whenever there shall be a breach of any of the agreements by the tenant herein contained, the landlord may re-enter upon any part of the said premises in the name of the whole, and thereupon the tenancy shall determine.

Proviso for re-entry.

Agreements by the Landlord.

THE LANDLORD agrees with the tenant in manner following:— (i.) To permit the tenant on his paying the several rents hereinbefore reserved or made payable, and performing and observing the several agreements by the tenant herein contained, peaceably to hold and enjoy the premises during the tenancy without interruption by the landlord, or any person claiming under him. (ii.) To provide within a reasonable distance from the premises timber in the rough, bricks and lime and straw for

Agreements by landlord;

—for quiet enjoyment by the tenant;

—to provide timber in the rough for repairs;

(*t*) See note (*e*) to Precedent XII.

(*u*) See *Meggeson* v. *Groves*, [1917] 1 Ch. 158, and see Agr. H. Act, 1923, sect. 30.

(*x*) *I.e.*, the person for the time being holding the estate. See interpretation clause, below, and *Smith* v. *Gronow*, [1891] 2 Q. B. 394.

(*y*) The case where a receiving order in bankruptcy is made against the tenant is expressly excepted from the operation of sect. 25 of the Agr. H. Act, 1923, which restricts the power of the landlord to terminate the tenancy.

PRECEDENT XIII.

OF A FARM FROM YEAR TO YEAR.

thatching necessary for the repairs to be executed by the tenant. (iii.) To keep the walls, tiled roofs, and main timbers of the said messuage and of all buildings in good and substantial repair, the tenant giving to the landlord timely notice whenever such repair is required (*z*). (iv.) To permit the tenant to have the use of the stackyard, barns, and granaries until the —— day of —— after the expiration of the tenancy for the purpose of stacking and thrashing his corn and grain. [*Here insert any other special stipulations relating to acts to be done, or payments to be made, by the landlord or incoming tenant at the expiration of the tenancy*].

—to keep walls, &c., in repair;

—to permit tenant to use stackyard after end of tenancy.

Compensation for Improvements.

Improvements.

FOR any improvement to which the provisions of sects. 48 and 49 of the Agricultural Holdings Act, 1923, apply (*a*), there shall be substituted in respect thereof for compensation under that Act, compensation according to the following scale. [*Here set out the scale*].

Record of Holding.

IF any record is required under the provisions of sect. 32 of the Agricultural Holdings Act, 1923, the cost of making any such record shall be borne by the party requiring the same.

Arbitration Clause.

Arbitration clause (*b*).

IF any difference shall arise between the landlord and tenant touching this agreement or anything herein contained, or the construction or operation thereof, or any price or compensation to be made or paid, or thing to be done hereunder, the matter in difference shall be referred to arbitration in accordance with the provisions of the Agricultural Holdings Act, 1923, and any amending Act.

Interpretation Clause.

Interpretation clause.

WHERE appropriate the expressions "the landlord" and "the tenant" include their respective successors in title.

AS WITNESS, &c.

Schedule.

SCHEDULE—*Particulars of —— Farm, showing Numbers on Ordnance Map, Description, Cultivation, and Acreage.*

(*z*) See *Murphy* v. *Hurly*, [1922] 1 A. C. 369.

(*a*) These sections apply to market gardens, see *Re Masters* v. *Duveen*, [1923] 2 K. B. 729. It is conceived that the clause will usually be dispensed with.

(*b*) See Agr. H. Act, 1923, sects. 16, 17, and Second Schedule; see also *Re Jones & Carter*, [1922] 2 Ch. 599; *Jones* v. *Evans*, [1923] 1 K. B. 12. As to the law generally on agricultural holdings, see Jackson's Agricultural Holdings (1924).

XIV.

LEASE *of a* MESSUAGE *and* FACTORY *by a person having the* POWERS *of a* TENANT *for* LIFE *under* THE SETTLED LAND ACT, 1925 (*c*).

PRECEDENT XIV.

BY TENANT FOR LIFE.

THIS LEASE, made, &c., BETWEEN A., of &c. [*tenant for life and estate owner in fee simple*] (who is a person having the powers of a tenant for life under the S. L. Act, 1925, and is herein called "the reversioner," which expression, [*&c., as in Precedent XII.*]) of the one part, and M., of, &c., and N., of, &c. [*lessees*] (herein called "the lessees," which expression includes their personal representatives and assigns), of the other part, WITNESSETH AS FOLLOWS :

1. THE reversioner, in consideration of the rent hereinafter reserved and of the covenants by the lessees hereinafter contained, and in exercise of the powers conferred by the S. L. Act, 1925, and of all other powers, Doth hereby demise and lease unto the lessees, ALL that parcel of land situate, &c., and also the messuage or dwelling-house, factory, boiler, and engine-house, and other buildings and erections now standing thereon, or on some part thereof, all which premises were lately in the occupation of X. Y., TO HOLD the premises unto the lessees for the term of fourteen years from the —— day of ——, 19—, YIELDING therefor (*d*) [*reservation of rent payable quarterly, as in Precedent VIII.*].

Demise.

Parcels.

Habendum.

Reddendum.

(*c*) Under the S. L. Act, 1925, every tenant for life, or person entitled to exercise the powers given by the Act to a tenant for life, may lease or join with co-owners in leasing (as the case may require) the settled land or any part thereof, or any easement, right or privilege over or in relation to the same, for ordinary, or building, or mining, or forestry purposes, subject to certain special regulations as regards building and mining leases, with powers for giving effect to prior contracts or covenants for renewal, or for confirming void or voidable leases, and may also accept surrenders and grant new leases, and other powers additional to those conferred by the previous Acts. Fines may be taken, but must be paid either to the trustees of the settlement or into Court in the same manner as purchase-money, and in the case of a mining lease, unless a contrary intention is expressed in the settlement, a portion of the rent must be set aside as capital money, and dealt with accordingly. The provisions of the Act which relate to the principal mansion-house, &c., power of completion, notice, entering into contracts, and dedicating parts of the settled land, apply to leases as well as to sales. Care must be taken that the requirements as to notice are attended to. Where the term does not exceed three years, a lease may be made by any writing under hand only, containing an agreement instead of a covenant by the lessee for payment of rent. Additional powers may be conferred by the settlement. See p. 148.

Compare this Precedent with Precedent XII.

(*d*) It is not necessary, especially in leases granted under powers, to express to whom the rent is payable. See *Whitlock's Case*, (1608), 8 Co. Rep. 69 b., cited in Sugden on Powers (1861), p. 811, who remarks that a reservation either (a) to the tenant for life and persons in remainder; or (b) to the tenant

PRECEDENT XIV.

BY TENANT FOR LIFE.

Covenants by lessees;

—to pay the rent;

—and rates, &c.;

—to keep in repair;

—to deliver up at the end of the term;

—to permit lessors to enter and view;

—and give notice of want of repair;

—to repair on notice;

—to insure;

—to produce policy.

Proviso for re-entry.

2. THE lessees do hereby jointly and severally covenant with the reversioner that the lessees during the said term (1) WILL pay unto the reversioner the said rent on the days and in manner aforesaid, and (2) WILL [*pay rates, &c., as in Precedent VI.*]; (3) WILL keep the said messuage, factory, boiler, and engine-house, buildings, erections, and premises hereinbefore demised, and all other buildings and erections which shall at any time during the continuance of this demise be built or erected on the said parcel of land, in good condition and repair, and well and sufficiently painted, cleansed and maintained in every respect; AND all the said premises, together with all other buildings or erections at any time during the continuance of this demise built or erected as aforesaid, and all landlord's fixtures, which now are, or at any time during the continuance of this demise shall be, in or upon the said premises, so well and sufficiently kept repaired, painted, cleansed and maintained as aforesaid, will, at the expiration or sooner determination of the said term, peaceably surrender unto the reversioner (*e*); (4) WILL permit the reversioner and his agents and workmen, [twice in every year] during the said term, to enter upon the said demised premises, or any buildings or erections to be built or erected thereon, to view the condition thereof; AND of all wants of repair then and there found, to give or leave notice in writing to the lessees to amend the same; AND will at their own expense within three calendar months from the giving or leaving of such notice, well and sufficiently amend the same accordingly; (5) WILL at all times, during the said term, keep such of the said premises as are of an insurable nature, and all such other buildings or erections as aforesaid, insured against loss or damage by fire [or aircraft] to the full value thereof in such office as the reversioner shall approve; AND will, when required by the reversioner, produce the policy, and the current year's premium receipt [; AND will expend all money received in respect of such insurance in reinstating or repairing the premises so destroyed or damaged].

3. IF and whenever any part of the said rent shall be in arrear for —— [*not exceeding* thirty (*f*)] days, whether lawfully demanded or not, or there shall be any breach of any of the covenants by the lessee herein contained the reversioner may re-enter upon the premises and thereupon the said term shall absolutely determine.

---

for life, his heirs and assigns; or (c) generally during the term, are all effectual in law. See L. P. Act, 1925, sect. 141.

(*e*) As to the distinction between chattels or fixtures and "buildings or erections," within the meaning of such a covenant, see *Pole-Carew* v. *Western Counties, &c. Co.*, [1920] 2 Ch. 97.

(*f*) See S. L. Act, 1925, sect. 42 (1) (iii).

4. THE reversioner doth hereby covenant with the lessees, that the lessees, performing and observing all the covenants by the lessees herein contained, may hold the premises hereby demised and all buildings or erections to be built or erected thereupon as aforesaid for the term aforesaid without any interruption by the reversioner. IN WITNESS, &c. (*g*).

PRECEDENT XIV.
BY TENANT FOR LIFE.
Covenant by lessor for quiet enjoyment.

XV.

LEASE *of a* PUBLIC-HOUSE. PREMIUM *paid*. COVENANT *to* RENEW (*h*).

PRECEDENT XV.
OF A PUBLIC-HOUSE.

THIS LEASE, made, &c., BETWEEN A., of, &c. [*lessor*] (herein called "the lessor"), of the one part, and B., of, &c. [*lessee*] (herein called "the lessee"), of the other part, WITNESSETH, that, in consideration of the sum of £—— this day paid by the lessee to the lessor (the receipt whereof the lessor doth hereby acknowledge) and of the rent hereinafter reserved and of the covenants by the lessee hereinafter contained. Premium.

1. The lessor Doth hereby demise unto the lessee ALL that messuage or public-house called ——, with the stables, yard, garden, and out-buildings thereunto belonging, situate in the Parish of —— in the County of ——, TO HOLD the premises unto the lessee for the term of —— years from the —— day of ——, 19—, YIELDING therefor, during the said term, the yearly rent of £——, clear of all deductions (other than such deductions as by the law for the time being the tenant is authorised to make (*i*)), by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, the first of such payments to be made on the —— day of ——, 19—, and the last to be made in advance on the

Demise. Parcels. Habendum. Reddendum.

(*g*) A counterpart of the lease must be executed by the lessees. See S. L. Act, 1925, sect. 42 (2).

(*h*) The restrictions on and the relief given against forfeiture of leases by sect. 146 of the L. P. Act, 1925 do not apply to a condition of forfeiture on the bankruptcy of the lessee, or on taking in execution the lessee's interest, if contained in a lease of a house used or intended to be used as a public-house (see sub-sect. (9) (c)). Any future contract to renew a lease for a further term exceeding 60 years is void (see L. P. Act, 1922, 15th Schedule, sect. 7 (2)).

(*i*) Under the Licensing Act, 1910, sect. 21, a tenant paying a compensation fund charge is entitled to make a deduction from his rent, in addition to such deductions as landlord's property tax (see *Hancock* v. *Gillard*, [1907] 1 K. B. 47), land tax, and tithe rentcharge, in respect of the payment at the rate specified in Schedule III., Pt. II. (but not exceeding half the rent), notwithstanding any agreement to the contrary (see *Wooler* v. *N. E. Breweries*, [1910] 1 K. B. 247).

PRECEDENT XV.

OF A PUBLIC-HOUSE.

—— day of —— next preceding the determination of the said term (*k*).

Covenants by lessee to pay rent, &c.

2. The lessee doth hereby covenant with the lessor, that the lessee during the said term (1) WILL [*remainder of covenants to pay rent*, (2) *rates, &c.*, (3) *keep in repair, as in covenants* (1) (2) *and* (4) *of Precedent VI.*, (4) *to permit the lessor to enter and view*, (5) *to repair on three months' notice, as in covenants* (6) *and* (7) *of Precedent X.*; (6) *not to vitiate insurance, as in covenant* (7) *of Precedent VII.*]; (7) WILL during the said term, so long as the necessary licences can be obtained, use the said messuage or public-house hereby demised, as an inn, tavern, or public-house only (*l*); (8) WILL not carry or suffer to be carried on upon any part of the said premises any trade or business other than the business of an innkeeper or maltster; (9) WILL not do or suffer to be done on the premises any act whereby the licences necessary for using the said messuage as an inn, tavern, or public-house, may be forfeited or the renewal thereof withheld (*m*); (10) WILL at all proper times endeavour to procure a renewal of the necessary licences for using the same (*n*);

To use the premises as a public-house only.

Not to carry on any other trade.

Not to do anything to forfeit the licence.

To obtain renewed licences.

(*k*) See note (*g*) to Precedent VI. Add, if desired :—

"And also by way of additional rent clear of all deductions such sum as the lessor shall in each year pay for the insurance of the licence or licences of the premises against forfeiture or refusal to renew, such last-mentioned rent to be paid on the half-yearly day for payment of the said yearly rent of £—— next ensuing after the insurance money shall have been paid."

But very frequently the amount required for insurance would be included in the yearly rent. If the addition is made, it should be borne in mind in the subsequent references to rent in the Precedent.

(*l*) See *Grimsdick* v. *Sweetman*, [1909] 2 K. B. 740, where, although the licence had been refused under the Licensing Act, 1904, it was held that the lease was not determined, and that the lessee was liable for the rent.

(*m*) As to the terms and effect of such a covenant, see *Bryant* v. *Hancock & Co., Ltd.*, [1899] A. C. 442; *Palethorpe* v. *Home Brewery Co., Ltd.*, [1906] 2 K. B. 5. As to non-renewal for redundancy, see *Wootton* v. *Lichfield Brewery*, [1916] 1 Ch. 44.

(*n*) The following covenant, if appropriate, may be inserted at this point :—

To buy liquors of firm.

"AND will not during the said term buy, receive, sell or dispose of or permit to be bought, sold, or disposed of, in, on, or out of the premises, any porter, stout, beer or ale, not directly and in good faith purchased of the firm [company] of ——, Brewers and Maltsters in ——, aforesaid, or their successors in business if able and willing to supply the same of good quality and at the fair current market price."

As to the meaning of "fair market price," see *Charrington* v. *Wooder*, [1914] A. C. 71. As to the right of a licence holder to recover increase in

PRECEDENT XV.

OF A PUBLIC-HOUSE.

(11) WILL not, during the said term, assign, underlet, or part with the possession of the said premises, or any of them, without the previous consent of the lessor; (12) WILL, &c. [*remainder of covenant to yield up the premises, as in covenant* (11) *of Precedent X., omitting the words in brackets, and adding*, " and do all such necessary acts for the purpose of transferring the trade and other licences, or procuring the same to be transferred to the lessor, or as he shall direct." *Add, if desired, power of attorney to lessor to obtain renewal of licences and recover compensation money*].

Not to assign.

And to deliver up the premises and transfer licences.

[3. *Proviso for re-entry as in Precedent VI.*]

[4. *Covenant by lessor* (1) *for quiet enjoyment, as in Precedent VI.*; (2) AND that the lessor will, during the said term [*insure* (*adding after* " premises " " fixtures, fittings, and plate-glass windows and mirrors," *and after* " fire " " or accident ") *and produce policy and receipts, as in Precedent VII.*]; [AND will apply all money received by virtue of such insurance in reinstating or repairing the premises so destroyed or damaged;] (3) AND ALSO that if the lessee shall desire to take a renewed lease of the said premises for the further term of —— years from the expiration of the term hereby granted, and of such desire shall, prior to the expiration of the said term, give to the lessor, or leave at his last known place of abode, six [calendar] months' previous notice in writing, and shall pay the rent reserved by, and perform the covenants by the lessee contained in, these presents up to the expiration of the term hereby granted, the lessor will at the cost of the lessee, upon payment of the sum of £——, by way of premium, by deed, demise to him the said premises for the further term of —— years, at the same yearly rent, and subject to the same covenants and provisoes as are herein contained, except this present covenant (*o*). [*Add certificate if required* (*p*); *Interpretation clause, as in Precedent VI.*] IN WITNESS, &c.

Covenant by lessor to insure, &c.

—to renew.

---

licence duty occasioned by Finance, &c. Act, 1910, see sect. 46 of that Act. See also Finance Act, 1912, sect. 2, since repealed by Finance Act, 1915, sect. 18, and *Bodega Co.* v. *Read*, [1914] 2 Ch. 757; *Watney & Co.* v. *Berners*, [1915] A. C. 885; *Bodega Co.* v. *Martin*, [1915] 2 Ch. 385; *Procter* v. *Tarry*, [1915] 2 K. B. 242; *Tratt* v. *Good*, [1915] 3 K. B. 59; *King* v. *Cadogan*, [1915] 3 K. B. 485; *Lewis* v. *Hughes*, [1916] 1 K. B. 831.

(*o*) As to options for renewal, see *Lewis* v. *Stephenson* (1898), 67 L. J. Q. B. 296; 78 L. T. 165; *Starkey* v. *Barton*, [1909] 1 Ch. 284; *Hollies' Stores* v. *Timmis*, [1921] 2 Ch. 202; *McIlroy* v. *Clements*, [1923] W. N. 81, 149. See also, as to covenants for perpetual renewal, *Wynn* v. *Conway*, [1914] 2 Ch. 705; *Gray* v. *Spyer* [1922] 2 Ch. 22 (a tenancy agreement), and L. P. Act, 1922, 15th Schedule, sects. 5 and 7, and L. P. Act, 1925, s. 149.

(*p*) If the rent does not exceed £20 a year, and the premium does not exceed £500, only the *ad valorem* duty charged in respect of the premium

XVI.

PRECEDENT XVI. — BUILDING LEASE.

BUILDING LEASE. LESSEE *to erect* HOUSES *according to plan.*

THIS LEASE, made, &c., BETWEEN A., of, &c. (herein called "the lessor," which expression, where appropriate, includes his successors in title), of the one part, and B., of, &c. [*lessee*] (herein called "the lessee," which expression, where appropriate, includes his successors in title), of the other part, WITNESSETH as follows :—

Parcels.

1. The lessor Doth hereby demise unto the lessee, ALL THAT parcel of land situate in the Parish of ——, in the County of ——, containing in the whole about —— acres —— roods, and delineated on the plan hereto, and thereon coloured ——. To HOLD the premises unto the lessee, for the term of —— years from the —— day of ——, 19—, YIELDING therefor during the said term the yearly rents following clear of all deductions, that is to say, for the first [three] years of the said term the rent of £——, and for the [fourth] and every subsequent year of the said term the rent of £——, the said rents to be paid by equal half-yearly payments on the 24th day of June and the 25th day of December in every year, the first half-yearly payment of the said rent of £—— to be paid on the —— day of ——, 19—, and the first half-yearly payment of the said rent of £—— to be paid on the —— day of ——, 19— [and the last payment of the said rent of £—— [*the higher rent*] to be made in advance three [calendar] months before the expiration of the said term] (*q*).

Reddendum of certain yearly rents.

Covenants by lessee, to pay rent and taxes;

2. The lessee Doth hereby covenant with the lessor that he the lessee (1) WILL during the said term pay the said rents at the times and in manner aforesaid; (2) WILL pay all existing and future taxes, rates, assessments and outgoings for the time being payable in respect of the premises (*r*); (3) WILL at his own expense within [three] years from the said —— day of ——, 19—, erect upon the said parcel of land, and according to plans

—to erect houses according to plans approved by lessor;

---

before the Finance &c. Act, 1910, will be payable, provided that the instrument contains the following certificate :—

Certificate as to premium.

"AND it is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration other than rent exceeds £500."

See Revenue Act, 1911, sect. 15, and General Remarks on Stamp Duties, above.

(*q*) See note (*g*) to Precedent VI.

(*r*) See General Remarks above, p. 251.

and elevations to be first approved of by the lessor, or his agent, twelve, and not more than twelve, good and substantial dwelling-houses, with proper and sufficient out-buildings and conveniences thereto (*s*); (4) WILL expend in the erection of each house £—— at the least; (5) WILL construct, complete, and finish all the said houses, erections, and buildings throughout, of good, sound bricks, mortar, timber, and slates, in a good and workmanlike manner; (6) WILL at the like expense, during the said term, well and substantially maintain and keep in good condition and repair the said dwelling-houses and all other buildings which shall be built upon the said parcel of land; AND at the like expense keep in good order all sinks, privies, and drains belonging to or draining the same; (7) WILL permit the lessor twice in every year during the said term to enter upon the premises to view the condition thereof and of all wants of repair then found to give or leave a notice in writing for the lessee to amend the same; (8) WILL at his own expense within three [calendar] months from such notice amend the same accordingly, and pay to the lessor all costs, charges, and expenses incurred by him of or incident to such notice; (9) WILL within three [calendar] months after any of the said dwelling-houses to be erected upon the premises as aforesaid shall have been roofed in, and thenceforward during the said term at his own expense, insure and keep insured the same against loss or damage by fire [or aircraft] in such office as the lessor shall approve, in a sum equal to two-thirds of the full value thereof; AND WILL, when required, produce to the lessor the policy and the current year's premium receipt; AND WILL expend all money received in respect of such insurance in reinstating or repairing the premises so destroyed or damaged; (10) WILL not, at any time during the said term, carry on or permit to be carried on upon the said parcel of land, or in any dwelling-house or building to be erected thereon, any noisome or offensive trade or business (*t*); (11) AND ALSO WILL, at the expiration or sooner determination of the said term, deliver to the lessor the premises with all dwelling-houses and buildings to be erected thereon, and all additions and fixtures thereto, in such condition and repair as aforesaid, and in all respects in such state and condition as shall be consistent with a due performance of the covenants hereinbefore contained.

—to expend in such building a certain sum;

—to build in a workmanlike manner;

—to repair;

—to cleanse drains, &c.;

—to permit lessor to view;

—to repair on notice;

—to insure;

—to produce policy.

Not to carry on offensive trades.

To deliver up at end of term.

[3. *Proviso for re-entry; and* 4. *Covenant by lessor for quiet enjoyment, as in Precedent VI.*] IN WITNESS, &c.

(*s*) When there is an express covenant to build and the covenant is broken, a covenant to build cannot be implied from a subsequent covenant to repair, see *Stephens* v. *Junior Army and Navy Stores*, [1914] 2 Ch. 516, disapproving *dictum* of Stirling, J., in *Jacob* v. *Down*, [1900] 1 Ch. 156.

(*t*) See note (*n*) to Precedent VI.

XVII.

PRECEDENT XVII.

LEASE TO BUILDERS.

LEASE *to* BUILDERS *of* HOUSES *erected by them upon* LAND *in the* COUNTY *of* LONDON (*u*).

THIS LEASE, made the —— day of ——, 19—, BETWEEN A., of, &c., and B., of, &c. (herein called "the lessors," which expression, where appropriate, includes their successors in title), of the one part, and C., of, &c., and D., of, &c. (herein called "the lessees," which expression, where appropriate, includes their personal representatives and assigns), of the other part, WITNESSETH, that in consideration of the money which has been expended by the lessees in the construction of the dwelling-houses and hereditaments hereinafter demised, and in consideration of the rent hereinafter reserved, and of the covenants by the lessees hereinafter contained :—

Parcels.

1. The lessors Do hereby demise unto the lessees, ALL THAT parcel of land situate on the —— side of a new street called —— Street, in the Parish of ——, in the County of ——, as the same is delineated on the plan drawn in the margin of these presents, and thereon coloured ——, and all those —— newly erected dwelling-houses now standing on part of the said parcel of land and distinguished on the said plan by the colour —— : AND ALSO all that other parcel of ground delineated on the same plan and thereon coloured ——, and being one equal moiety of the said street (*x*), TOGETHER WITH full right of passage for all persons, carriages, and animals, to and from the said first-mentioned parcel of land and dwelling-houses over the other moiety of the said street, and over all neighbouring (*y*) streets belonging in possession or reversion to the lessors : AND TOGETHER WITH full right of passage and running of water and soil from the said first-mentioned parcel of land and dwelling-houses through the sewer which runs under the said street, one equal moiety whereof is hereinbefore demised : EXCEPT NEVERTHELESS AND RESERVING full right of passage over the said moiety hereinbefore demised of the said street, for the lessors and for all other persons and all carriages and animals to and from all neighbouring lands and houses belonging in possession or reversion to the lessors : AND ALSO full right of passage and running of water and

Together with right of way over street;

—and right of passage of water, &c.

excepting right of way over street

—and right of passage of water, &c.

(*u*) This Precedent is inserted as the form to be embodied in the Third Schedule to the agreement, Precedent IV.

(*x*) For registered land, add "AND all which land is [part of] the registered land comprised in the title No. ——." Notice of the lease may be registered : see L. R. Act, 1925, sect. 48.

(*y*) Cf. *Re Bateman and Parker*, [1899] 1 Ch. 599 ("adjoining"); *Wellington* v. *Lower Hutt*, [1904] A. C. 773 ("adjacent").

soil from all such neighbouring land and houses as aforesaid, through the sewer aforesaid, and through all other sewers and all drains and channels in or under the said parcels of land hereinbefore demised, or either of them : To HOLD the premises UNTO the lessees, for the term of —— years, from the —— day of ——, 19— : YIELDING therefor during the said term the yearly rent of £——, clear of all deductions, by equal quarterly payments on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, the first of such payments to be made on the —— day of ——, 19—, and the last quarterly payment to be made in advance on the —— day of ——, immediately preceding the expiration of the said term (*z*).

Habendum.

Reddendum of certain rent.

2. The lessees do hereby jointly and severally covenant with the lessors, THAT the lessees (1) WILL during the said term pay the rent hereinbefore reserved on the days and in manner aforesaid; (2) WILL during the said term [*pay rates and taxes, as in Precedent VI.*]; (3) WILL complete all the said dwelling-houses hereinbefore demised, with yards, gardens, forecourts, offices, outbuildings, sewers, and drains, to the same respectively, so that the same shall be fit for habitation and use, to the satisfaction of the surveyor for the time being of the lessors, within twelve calendar months from the date hereof; (4) WILL during the said term keep all the said premises (including the said moiety hereinbefore demised of the said street, and the corresponding moiety of the sewer under the same) in good condition and complete repair : AND in particular paint the external wood and iron-work thereof in every fourth year of the said term, and the inside wood and iron-work in every seventh year of the said term, and both external and internal work once during the last three years of the said term; (5) WILL permit the lessors, and their agents, surveyors, and workmen [*to enter to view the premises, and* (6) *that the lessees will repair upon notice, as in covenants* (7) *and* (8) *in the preceding Precedent, but substituting the plural for the singular number*]; (7) WILL during the said term keep the said dwelling-houses and all other buildings and landlord's fixtures which may at any time be erected or placed on or about the said first-mentioned parcel of land insured against loss or damage by fire in the sum of £—— at least, by a policy or policies to be effected in such office as the lessors shall from time to time approve : AND will whenever required produce such policy or policies and the current year's premium receipt to the lessors or their agent [: AND will apply all money received in respect of such insurance in reinstating or repairing

Covenants by the lessees;

—to pay rent;

—and taxes;

—to complete dwelling-houses;

—to repair;

—to paint;

—to permit the lessors to enter to view the premises and to repair on notice;

—to insure;

—and produce policies and receipts;

(*z*) See note (*g*) to Precedent VI.

PRECEDENT XVII.

LEASE TO BUILDERS.

the premises so destroyed or damaged]; (8) WILL not carry on or permit to be carried on upon the said premises or any part thereof any manufacture of an obnoxious character, or any noisy, noisome, offensive, or dangerous trade, business, or occupation, or any nuisance, but will use the same only as private dwelling-houses or shops, or for carrying on handicraft occupations of a quiet, innoxious, and inoffensive nature (*a*); (9) WILL not, without the licence in writing of the lessors, make any alteration in or addition to any of the said dwelling-houses, or in or to the elevations thereof respectively, or the offices or outbuildings thereto respectively belonging; (10) WILL not darken, injure, or obstruct any window or light in or belonging to the said premises or any adjoining buildings of the lessors, and will not permit any new window or light to be opened or any act or thing to be done which shall or may constitute an encroachment upon or interference with the said premises, or tend to subject the said premises or any part thereof to any easement or servitude: AND in case any such new window or light shall be opened or any such act or thing shall be done or attempted to be done will forthwith give notice thereof to the lessors and at the request and cost of the lessors will do all such things as may be reasonably required by them for protecting the premises against such encroachment or interference and for preventing the acquisition of such easement or servitude; (11) WILL not assign [underlet, or part with the possession of] the premises or any part thereof without the licence in writing of the lessors; (12) AND WILL at the expiration or sooner determination of the said term deliver up to the lessors the premises and all fixtures which may at any time during the last —— years of the said term be in or about the same, in such good condition and repair as aforesaid, and in such state and condition as shall be consistent with the due performance of the several covenants hereinbefore contained: PROVIDED that if the said street, a moiety whereof is hereinbefore expressed to be hereby demised, and the sewer under the same, shall wholly or partially be taken over by the local authority as a public road and sewer, then and thenceforth the obligation under the covenant in that behalf hereinbefore contained to keep the same in repair shall cease wholly, or to the extent to which the same shall be taken over by the local authority as aforesaid.

—not to carry on offensive trades;

—will not make alterations;

—not to assign without licence;

—and to deliver up the premises at the end of the term.

Proviso that covenant to repair road and sewer shall cease, on adoption by the parish.

3. If and whenever any part of the said rent shall be in arrear for twenty-one days, and whether the same shall have been legally demanded or not, or there shall be a breach of any of the covenants by the lessees hereinbefore contained (except in the

Proviso for re-entry.

(*a*) See note (*n*) to Precedent VI.

case mentioned in the proviso lastly hereinbefore contained), the lessors may re-enter upon the said premises, and thereupon the said term of —— years shall absolutely determine.

PRECEDENT XVII. LEASE TO BUILDERS.

4. The lessors do hereby covenant with the lessees that the lessees, paying the said rent and performing and observing all the covenants hereinbefore contained, may peaceably hold and enjoy the said premises during the said term without any interruption by the lessors, or any person claiming under them. IN WITNESS, &c.

Covenant by the lessors for quiet enjoyment.

XVIII.

MINING LEASE (*b*).

PRECEDENT XVIII. MINING LEASE.

THIS LEASE, made, &c., BETWEEN A., of, &c. [*lessor*] (herein called "the lessor," which expression, where appropriate, includes his successors in title), of the one part, and B., of, &c. [*lessee*] (herein called "the lessee," which expression, where appropriate, includes his personal representatives and assigns), of the other part, WITNESSETH as follows :—

1. The lessor Doth hereby demise unto the lessee, ALL metallic mines and minerals, open and hidden, which belong to the lessor, in the Parish of ——, in the County of ——, within the limits following [*description of limits*], within which limits a certain mine called —— is now in course of being [*or* "has been"] worked, AND ALL liberties which the lessor has power to grant, of searching for, getting, making merchantable, and removing the said metallic mines and minerals, EXCEPT and reserved unto the lessor, all mines and ores of ——, and unrestricted liberty for him and his agents, servants, and workmen, to search for, get, make merchantable, and remove all mines and ores of ——, and all clay, stone, earth, and minerals, not hereby demised, and to communicate from and to any adit or working within the limits aforesaid, to or from any adit or working beyond the same limits, and to examine and take plans of all workings under this demise; and in such searching for, communicating, examining, and taking plans, to use the adits,

Demise. Parcels. Exception.

(*b*) As to mines and tin streaming works within the Stannaries, see Stannaries Acts, 1869 and 1887; Stannaries Court (Abolition) Act, 1896; Companies Act, 1908, and County Court Rules, 1903 and 1914. See also *Dunbar* v. *Harvey*, [1913] 2 Ch. 530; *Re Radium Ore Mines*, [1914] 110 L. T. 57. As to the rights of working minerals and rights ancillary thereto and of support, see the Mines (Working Facilities and Support) Act, 1923, and *Re Nunnery Colliery Co.*, [1924] W. N. 257; see also *Westhoughton U.D.C.* v. *Wigan &c. Co.*, [1919] 1 Ch. 159.

PRECEDENT XVIII.

MINING LEASE.

shafts, machinery, and tackle in or about the mines hereby demised, making reasonable compensation for such use of the said machinery and tackle, except in examining and taking plans: TO HOLD the premises hereby demised unto the lessee, henceforth for the term of —— years; YIELDING therefor a money-rent equal to one-fifteenth of the money for which the materials sold shall be sold, except the minerals a share whereof shall have been previously rendered, AND YIELDING so often and to such extent as shall be required by notice (the same to be determinable by notice), as a mineral rent, one-fifteenth of all materials which for the time being shall have been gotten and not sold, the said materials to be made merchantable before sale or render of a share thereof; the said money and mineral rents to be clear of all present and future taxes, rates, and assessments, and all other charges and deductions whatsoever, and to be paid or delivered as hereinafter mentioned.

Habendum.

Reddendum.

Covenant by lessee.

To work the mine.

To sell the minerals to be sold.

2. The lessee doth hereby covenant with the lessor, that the lessee WILL work the said mines upon the cost-book and not the scrip system, and will, without delay, make merchantable all minerals gotten; AND within reasonable periods during the said term, sell on the said lands, the mines and minerals under which are hereinbefore demised, by private ticketings, and not elsewhere or otherwise (unless with consent) all the said minerals, except those in respect whereof a mineral rent shall previously have been rendered; AND WILL GIVE ten days' notice of the day, hour, and place of every such sale, and of the minerals to be offered for sale; AND WILL, within ten days after every such sale, give a return of the minerals sold thereat, with their prices and purchasers; AND WILL, immediately after every such sale, and before the removal of the minerals sold, pay the money-rent thereby ascertained; AND WILL, without intermission, lay out on the surface of the aforesaid lands all minerals in respect whereof a mineral-rent shall be the required render, and divide the same into fifteen shares of equal value, AND give ten days' notice of the day, hour, and place of every division, and immediately after every division, render the mineral-rent thereby ascertained; AND WILL pay all present and future taxes, rates, and assessments, and all other charges and deductions whatsoever, upon

And pay the money-rent.

And to make equal division of the minerals to be divided.

To pay taxes, &c. (*c*).

Mineral rights duty.

(*c*) Mineral rights duty, as between the immediate lessor and the working lessee, is to be borne by the immediate lessor, notwithstanding any contract to the contrary: Finance Act, 1910, sect. 20, sub-sect. (4). As to what are "minerals" within the Act, see *Att.-Gen.* v. *Salt Union*, [1917] 2 K. B. 488, where it was held that natural brine or salt in solution pumped up from below the surface was a mineral liable to duty. Clay, common brick clay, common brick earth, or sand, chalk, limestone, or gravel are expressly excepted (sect. 20, sub-sect. (5)). See also *Anstruther's Trustees* v. *Inland Revenue*, [1912] S. C. 1165, and Finance Act, 1920, sect. 57, sub-sect. (5).

or in respect of the said premises hereby demised, or the aforesaid minerals or sale-money, or the aforesaid money or mineral-rents, or any part thereof respectively; AND WILL during the said term, with no less than —— able-bodied miners, in the best and most approved manner, and without intermission, except while prevented by inevitable accident or repairs, try the lands, the mines and minerals under which are hereby demised, and effectually drain and work the mines hereby demised, and for the time being open or found, and make, erect, and maintain, all shafts, adits, buildings, engines, machinery, and apparatus, necessary for those purposes; AND WILL NOT, unless with consent, drive any adit within —— fathoms of the extremity of any of the said lands; AND WILL substantially sustain and maintain all the workings of the said mines, and all engines, machinery, apparatus, buildings, and fixtures, in a proper course of working and repair, and, at the end or other determination of the said term, deliver up the said mines, workings, and buildings, in good condition and perfect working order, unto the lessor, his heirs or assigns; AND, at the end of the said term, if required by notice one calendar month or upwards previously thereto, or upon the sooner determination of the said term, if required by notice, deliver up the said engines, machinery, and apparatus, and all fixtures belonging to the lessee, or the parts thereof specified in such notice, to the lessor, at a valuation to be agreed on, or to be determined by two arbitrators, or their umpire, in the usual way; AND WILL during the said time keep proper books of account of the workings of the said mines, and of the disposal of the minerals obtained, and will keep the said books and the cost-book or cost-books, and any plans which may be made of the workings of the said mines, on the lands aforesaid, and will give copies of and extracts from the same books and plans as shall be required, AND WILL also permit the said books and plans to be inspected and copied by the person or persons named in that behalf in any notice; AND WILL make good, or make compensation for, all damage done by him the lessee, which the lessor or the lessee is, or may be compellable to make good, or make compensation for, and will indemnify the lessor therefrom, and from all expenses in relation thereto; AND WILL NOT assign, or underlet, the said premises hereby demised, or any part thereof, without consent.

To employ not less than —— miners.

To maintain workings.

To deliver up machinery at a valuation.

To keep accounts.

To make compensation for damage.

Not to assign.

3. EVERY NOTICE and consent hereinbefore mentioned means, except where otherwise hereinbefore expressed, notice or consent on behalf of the lessor, in writing, to be given and signed by him, or some person authorised by him, and, in case of notice, either actually delivered to the lessee, or put up within the

Declaration as to notice and consents.

PRECEDENT XVIII.

MINING LEASE.

limits aforesaid, or otherwise served in accordance with the regulations by law prescribed (*d*); AND every such notice shall be notice to the lessee; AND every notice, return, copy, extract, and plan, hereinbefore covenanted to be given by the lessee, shall be made and given at his own expense, and be signed by him or the captain of the said mines, and shall be given to the lessor, or some person authorised by him to receive the same.

Powers of distress and entry.

4. ON failure by the lessee to perform or observe any of the covenants hereinbefore contained, the lessor may stop, seize, and distrain all minerals, engines, machinery, apparatus, fixtures, goods, chattels, and effects, in and about the mines hereby demised, or within the limits aforesaid, and every distress there made take away and retain to his use; AND, if any money-rent shall be due, may sell the said distress, as in common cases of distress for rent, and, out of the money arising thereby, retain such money-rent, and any further money-rent which may become due, and the costs of making, keeping, and selling such distresses; and on every such failure as aforesaid, or if the said premises hereby demised shall be assigned or assignable by means of the bankruptcy of the lessee, the lessor may re-enter and enjoy the premises hereby demised, and thereupon the said term of years shall absolutely determine; but until any such failure, or until the said premises shall be assigned or assignable as aforesaid, the lessee may enjoy the said premises without eviction, or (except as hereinbefore excepted and reserved) interruption by the lessor.

Agreement for granting a future lease.

5. IF the lessee shall, during the said term, perform and observe all the covenants and conditions hereinbefore contained and shall, not less than —— calendar months before the end of the said term, deliver to the lessor an agreement in writing by three responsible persons to join as co-lessees, and such persons shall be approved of by the lessor, then and in such case the lessee, together with such intended co-lessees, shall be entitled to a lease from the lessor of the said premises hereby demised, for any term not exceeding —— years from the date of these presents, at the rents hereinbefore reserved, and under and subject to such covenants, conditions, and agreements, as to the lessor shall seem reasonable, but so that the persons to whom such further lease shall be granted shall pay all costs of such lease, and also (if required) of a survey or plan upon such scale as the lessor shall require of the said premises to be demised (*e*).

(*d*) See L. P. Act, 1925, sect. 196.

(*e*) This clause was framed for insertion in leases granted for short terms for the purpose of searching for minerals; it is, of course, not a necessary part of the Precedent in the text.

[6. *Covenant by lessor for quiet enjoyment, as in the next Precedent.*] IN WITNESS, &c.

PRECEDENT XVIII.

MINING LEASE.

XIX.

LEASE *of a* COLLIERY *and* SEAM *of* COAL. *Variation for* BRICK-FIELD.

PRECEDENT XIX.

OF A COLLIERY.

THIS LEASE, made the —— day of ——, 19—, BETWEEN A., of, &c. (herein called "the lessor," which expression, where appropriate, includes his successors in title), of the one part, and B., of, &c., and C., of, &c. (herein called "the lessees," which expression, where appropriate, includes their personal representatives and assigns), of the other part, WITNESSETH that, in consideration of £—— paid by the lessees to the lessor (the receipt whereof the lessor doth hereby acknowledge), and of the rents and royalties hereinafter reserved, and of the covenants by the lessees hereinafter contained.

1. THE lessor doth hereby demise and grant unto the lessees, ALL THAT colliery known as the —— Colliery, situate at ——, in the County of ——, with the manager's house and garden and the miners' cottages now occupied therewith, and the engine-house, workshops, offices, pits, fixtures, fixed machinery, pit-bank, railway-siding, canal-basin, easements and appurtenances belonging thereto: AND ALSO ALL that mine or seam of coal called the —— Coal now remaining ungotten, within and under all those closes, parcels of lands, roads, messuages, tenements, and hereditaments, containing altogether an area of —— acres or thereabouts, situate in the Parish of —— in the said County of ——, and delineated on the plan hereto whereon the boundaries are defined by an external border coloured *red*: TOGETHER WITH LIBERTY for the lessees, without entering upon the surface of any other of the said lands except the parcels of land containing —— or thereabouts lying on the south side of the —— Railway, and coloured *yellow* on the said plan, and without entering upon or disturbing any existing or future building on the said parcels of land coloured *yellow*, to work, get, carry away, and dispose of the said mine, or seam of coal hereby demised (hereinafter called "the demised mine"), and also any adjacent or other coal or ironstone of which they are or may become the owners or lessees, and whether now belonging to the lessor or to any other person: AND for the purposes aforesaid upon the surface of any of the said parcels of land coloured *yellow*, to

Demise.

Parcels.

Colliery, &c.;

—and mine of coal under specified area of land;

—with liberty to work the same without entering upon the surface except of certain part;

—and to erect engines, &c.;

PRECEDENT XIX.

OF A COLLIERY.

sink, erect, make, maintain, and use any pits, engine-houses, buildings, coke-ovens, iron-furnaces, iron-works, brick-kilns, roads, railways, reservoirs, watercourses, basins, wharves, engines, and machinery, and to deposit, bank, make into coke, burn, smelt, convert, and manufacture the produce of the demised mine, or any other coal or any ironstone, and to dig and get brick-earth and sand, and to make and burn the same into bricks to be used in and about the said colliery and mine, but not elsewhere, and to construct, make, maintain, and do all other works and things which may be necessary or convenient: AND below the surface of all the said lands included within the said *red* border (whether coloured *yellow* or not), to make, maintain, and use any necessary or convenient underground works whatsoever: EXCEPT AND RESERVING nevertheless unto the lessor sufficient pillars and bulwarks of coal at the bottom of and round the walls of each of the existing pits and of any new pit which may be sunk to the demised mine, and so much (if any) of the rest of the coal therein as he shall remove in sinking to, working or getting any of the other mines, or shall desire to retain as a support for any pit he may sink to any such other mine: AND ALSO the right of sinking to, working, getting and carrying away all or any of the mines, minerals and substances in or under the said lands other than the demised mine, and for those purposes to sink, make, erect, and use all such pits, buildings, engines, machinery, roads, works, and conveniences upon, through, or under all or any of the same lands and over, under, or across any of the roads, ways, levels, and workings of the lessees or their assigns as shall be necessary or expedient, so that such roads, ways, levels, and workings be not unnecessarily injured: TO HOLD the premises unto the lessees, but subject to the rights (if any) of the —— Railway Company, and of the —— Canal Company in so much of the said coal as is under or required for the support of the said railway and canal respectively, and subject to the provisions of the Mines (Working Facilities and Support) Act, 1923, and any amending Act (*f*), for the term of —— years, from the —— day of ——, 19—: YIELDING therefor during the said term on the —— day of —— in each year, the rents and royalties hereinafter specified (that is to say), IN respect of the demised mine, a footage rent after the rate of £—— for every acre in extent being one foot in thickness (and so on in proportion for every less quantity than an acre and for any greater or less thickness than one foot), of coal gotten during the preceding six calendar months:

—and to carry on underground works.

Exception of coal for support of pits;

—and of so much as lessor may get in sinking to other mines.

Reservation of right of working other mines.

Habendum.

Reddendum.

—of footage rent;

(*f*) As to minerals under railways, see sects. 15—17 of that Act and the First, Second and Third Schedules thereto.

AND IN CASE the lessees shall not in any half-year get such a quantity of the said coal as according to the said footage rent will produce a clear half-yearly minimum rent of £——, then such a sum as, together with the footage rent payable for the coal actually gotten during the preceding half-year, will amount to the said minimum rent of £—— : AND, in respect of the right of outstroke from other mines, a royalty after the rate of —— per ton of twenty hundredweight, for all the coal, minerals, and substances brought to surface during the preceding six calendar months : AND in respect of the liberties hereinbefore granted relative to the surface of the said parcels of land coloured *yellow*, a half-yearly rent after the rate of £—— for every statute acre (and so in proportion for any less quantity), now or at any time occupied, such last-mentioned rent to continue payable until the rent-day next after the land in respect whereof the same shall be payable shall have been cleared, even if such land shall not be cleared until after the expiration or sooner determination of the said term : THE SAID several rents and royalties to be paid clear of all deductions : AND, for the purpose of ascertaining the amount of mine-rent payable from time to time under the reservation of rents hereinbefore contained, coal which shall be found unworkable or unsaleable shall not be taken in account, and the measurements shall be made underground, and the acreage or superficial measure, and the thickness of the coal, shall be taken and measured at right angles to one another so as to ascertain the true cubical contents of the mine gotten : PROVIDED that, if in any half-year the lessees shall not actually get from the demised mine, such a quantity of coal as, according to the footage rent hereinbefore reserved, would have produced a half-yearly rent of £——, and shall in any subsequent half-year or half-years get therefrom such a quantity of coal as at the footage rent aforesaid would produce a half-yearly rent exceeding £——, they shall not be liable to pay any rent for so much of the surplus coal gotten as at the footage rent aforesaid would make up the deficiency (*g*) : PROVIDED that, if any part of the rents

—and of minimum half-yearly mine-rent :

—and of outstroke royalty ;

—and of surface rent.

Provision for ascertaining the rent by underground measurement.

Average clause.

Power of distress.

(*g*) The following somewhat different mode of framing the reddendum and average clause (taken from a lease of a brickfield) is slightly more convenient where a royalty per ton gotten or gotten and removed instead of a footage rent is reserved :—

" YIELDING therefor during the said term the certain yearly rent of £—— for —— bricks, whether such number of bricks shall be yearly manufactured on the said premises or not, during each year of the said term, such rent of £—— to be payable by two equal half-yearly payments in each year on the —— day of —— and the —— day of ——, and the first payment thereof to be

Reddendum of certain rent for —— bricks :

PRECEDENT XIX.

OF A COLLIERY.

or royalties hereby reserved, shall be in arrear for twenty-one days, whether the same shall have been legally demanded or not, the lessor may enter, seize, and distrain and sell and dispose of, in the same manner as landlords may for rent in arrear, the coal, engines, machinery, railways, plant, cattle, implements, utensils, gear, and chattels, or any part thereof respectively belonging to the lessees within or upon any part of the said premises or any mine or mines for the time being worked in connection therewith lying within or under any adjoining or neighbouring lands, and out of the money arising from the sale of any such distress or distresses may satisfy all such arrears then due, together with the expenses of or incident to any such distress or sale, rendering the overplus (if any) unto the lessees (*h*) :

Covenants by the lessees;

—to pay rents;

—and taxes (*i*);

2. THE LESSEES do hereby covenant with the lessor, THAT the lessees (1) WILL during the said term pay to the lessor the several rents and royalties hereinbefore reserved on the days and in the manner hereinbefore appointed for the payment thereof, clear of all deductions; (2) WILL pay all existing and future taxes, rates, assessments, and outgoings of every description for the time being payable either by landlord or tenant, in respect of or charged upon the premises, or of or upon the rents hereby reserved, or any land, erection, or work entered upon, erected, or made under or by virtue of these presents : (3) WILL, before the

—to get enough coal to produce

—— day of ——, 19— [*six calendar months from the commence-*

—and of royalty of ——s. per 1,000 bricks above ——.

made on the —— day of ——, 19— : AND YIELDING over and above the said certain yearly rent, the further rent or royalty of ——s. for every thousand bricks manufactured on the said premises over and above the said quantity of ——; the said further rent or royalty to be payable on such of the said half-yearly days hereinbefore mentioned as shall happen in any year next after the said bricks shall have been burnt ready for delivery : PROVIDED ALWAYS, and it is hereby agreed, that if in any year or years of the said term the lessee shall not actually manufacture from and out of the said premises the full quantity of —— bricks, he may, in any one or more of the [next] succeeding [three] years in which more than that quantity of bricks shall be manufactured, manufacture from and out of the said premises without paying any further rent or royalty for the same, enough bricks to make up the deficiency."

Average clause.

It should be here observed that the lease contained a covenant by the lessee to make only bricks of the common sizes.

(*h*) This power is not a bill of sale within the B. S. Acts, 1878 and 1882 : See *Re Roundwood Colliery Co.*, [1897] 1 Ch. 373; and L. P. Act, 1925, sect. 189, sub-sect. (1).

(*i*) As to mineral rights duty, see note (*c*) to preceding Precedent.

ment of the term], and afterwards half-yearly before every subsequent —— day of —— and —— of —— [*the rent days*], during the said term, get such a quantity at least of the said coal as according to the footage rent hereinbefore reserved will produce a clear half-yearly rent of £—— [*the minimum rent*] : (4) WILL, during the said term, keep the iron tubing with which a portion of each of the two existing pits is cased in the present position thereof, and in thorough repair and watertight, and will not suffer water to flow into the workings : (5) WILL, during the said term vigorously, and without any voluntary intermission, and fairly, and in a regular, workmanlike manner, and according to the most approved principles, work the demised mine, and get and raise the coal fully and clearly before them (*k*) : (6) WILL, during the said term, and at the expiration or sooner determination thereof, leave sufficient pillars and bulwarks of coal at the bottom of and round the walls of each of the existing pits, and of any new pit : (7) WILL use only for colliery purposes, or in building on the said lands coloured *yellow*, all bricks made under the liberties hereinbefore granted, and will not sell or remove any brick-earth or sand dug from the same lands or any bricks made therefrom : (8) WILL during the said term keep in good repair and condition the private or occupation road on the lands of the lessor leading to the said colliery from the road leading from —— to —— : (9) WILL effectively fence off such parts of the said lands coloured *yellow* as are or shall be used for any of the purposes of these presents from the adjoining lands, and hang sufficient gates in the fences for the convenient passing and repassing of the owners or occupiers of the said adjoining lands, who and whose servants and workmen shall always be at liberty, whether on foot or on horseback and with or without horses, cattle, carts, and carriages, to pass and repass through such gates, and over and across all ways or roads, doing thereby as little damage as may be : AND will, during the said term, keep the said fences and gates in such repair as aforesaid : (10) WILL make reasonable compensation to every tenant and occupier of any of the said lands which may be taken or used for colliery or other purposes by the lessees for all loss or damage he may sustain thereby : (11) WILL indemnify the lessor against all liability for loss or damage done by the lessees to or on any lands of the lessor : (12) WILL during the said term at the like expense keep and uphold the said manager's house, miners' cottages,

the minimum half-yearly rent;

—to keep the iron tubing in pits in repair;

—to work the mine without interruption;

—to leave pillars at bottom of each pit;

—to use bricks for colliery purposes only;

—to repair occupation road;

—to fence off lands used for colliery purposes;

—to make compensation to tenants of surface-lands;

—and indemnify the lessor;

—to repair engines, &c.;

(*k*) As to this covenant, see *Charlesworth* v. *Watson*, [1906] A. C. 14, where, owing to difficulties in working, it had become impossible to work the coal without heavy loss and the undertaking had consequently been abandoned. See also *Brewer* v. *Rhymney Iron Co.*, [1910] 1 Ch. 766.

PRECEDENT XIX.

OF A COLLIERY.

engine-house, workshops, offices, buildings, pits, pit-bank, railway-siding, canal-basin, fixed machinery, and fixtures hereinbefore demised, and all additions thereto respectively (hereinafter collectively called "the demised plant and additions thereto"), and all new buildings, pits, railways, roads, reservoirs, works, fixed machinery and fixtures, which shall during the said term be erected or placed on the said lands coloured *yellow* (hereinafter collectively called "new works"), in good and substantial repair and working order: (13) WILL on the —— day of ——, 19—, and afterwards on every subsequent half-yearly rent-day, or within twelve days afterwards, make and deliver to the lessor, or his agent, a just account in writing, signed by the lessees, of the quantity, thickness, and cubical contents of the coal gotten from the demised mine in the preceding half-year, AND of the weight of the coal, minerals, and other substances brought to surface, by means of the existing pits, or any new pit on the said lands included in the said plan, from any other land, with all proper details, and also a correct plan and admeasurement drawn upon a scale of not less than —— inches to an acre, and similarly signed of, the surface of the land under which the demised mine shall have been gotten: the said accounts, plans, and admeasurements respectively to be binding upon the lessees, unless some manifest error shall appear therein and shall be notified by them in writing to the lessor within six calendar months after the delivery thereof: (14) WILL permit the lessor and his agents and other persons employed by him at all times during the said term to enter upon the said lands coloured *yellow*, and into any buildings or works thereon, and examine the state and condition thereof, and descend and pass into and through, and ascend from the demised mine, and to view the state and condition of the said mine, and of the workings thereof, and make admeasurements and diallings, and for any such purpose to have the assistance of the colliers and workmen, and at all reasonable times during the said term to inspect and take copies of all plans, books, accounts, vouchers, papers, and writings of the lessees: (15) WILL at the expiration or sooner determination of the said term, deliver up to the lessor the demised mine so far as ungotten, and the demised plant and additions thereto and new works (except such as shall be removed by the lessees under the provisions hereinafter contained), in such good and substantial repair and working order as aforesaid, and in all respects in such state and condition as shall be consistent with the due performance of the several covenants hereinbefore contained: (16) WILL within twelve calendar months after the expiration or sooner determination of

—to deliver accounts and plans half-yearly;

—which are to be conclusive unless error notified within six calendar months;

—to permit the lessor to enter to view the premises;

—to deliver up the premises at the end of the term;

—and to clear the land of

the said term, either clear so much of the said lands coloured *yellow* as shall have been used by the lessees by virtue of these presents from coal slack and rubbish, and, if required, from all roads and works which shall have been made thereon by the lessees by virtue of these presents, and restore the surface and fences, or pay compensation for the same after the rate of £—— per acre, and so in proportion for any less quantity.

rubbish, &c., and restore the surface.

3. IT shall not be lawful for the lessees during the said term or at or after the expiration or sooner determination thereof, without the previous licence in writing of the lessor, to take down or remove any or any part of the demised plant and additions thereto and new works, but it shall be lawful for the lessees at or within twelve calendar months after the expiration or sooner determination of the said term, to sell and to remove all engines, machinery, rails, sleepers, ropes, plant, and materials belonging to them, first giving the lessor the option of purchasing all or any part thereof, at such a price as the same would fairly be worth at the time of giving such option for the purpose of removal, such price if the parties differ to be settled by arbitration under the provision hereinafter contained, and so that the lessor shall be entitled to set off his purchase-money wholly or *pro tanto* as the case may admit against any money, costs, damages, or expenses which may then be due or owing, or recoverable from, or payable by, the lessees under any of the reservations or covenants herein contained : PROVIDED nevertheless that the lessees shall, if required, at the expiration or sooner determination of the said term, take down all or any of the engine-houses, offices, and buildings which may then be on the said lands coloured *yellow*, and dress and clean the bricks and materials thereof, and stack the same on the said land for the use of the lessor (*m*).

Lessees not to remove buildings or fixtures demised without lessor's consent;

—but may sell their own machinery and plant, first giving the lessor the option of taking it at selling price (*l*).

Lessees to take down any buildings which the lessor may require them to take down.

(*l*) Apart from such clause, the tenant cannot remove trade fixtures : see *Re British, &c. Collieries*, [1920] 1 Ch. 326; *Pole-Carew* v. *Western Counties, &c. Co.*, [1920] 2 Ch. 97.

(*m*) The following is a power of surrendering the lease when all the workable coal is exhausted :—

"PROVIDED that, if before the expiration of the said term the whole of the workable and marketable coal hereinbefore demised, except such part thereof as it shall not be incumbent upon the lessees to get and which they shall permanently leave ungotten, shall have been gotten, it shall be lawful for them, having paid the rents hereby reserved, and performed and observed the several covenants and agreements herein contained up to the time of the surrender, to surrender the said premises unto the lessor."

Proviso for surrender of premises when all the workable and marketable coal has been gotten.

PRECEDENT XIX. — OF A COLLIERY.

Proviso for re-entry.

4. IF and whenever any part of the rents and royalties hereinbefore reserved shall be in arrear for —— days, or there shall be a breach of any of the covenants or agreements by the lessees herein contained, or the lessees shall enter into, make, or execute any composition with, or assignment for, the benefit of their creditors, or have a receiving order in bankruptcy made against them, or be adjudicated bankrupt, or being a company shall enter into liquidation, whether compulsory or voluntary (*n*), the lessor may re-enter upon any part of the demised mine and premises in the name of the whole, and thereupon the said term of —— years shall absolutely determine, without prejudice nevertheless to the recovery of any rent or other money then due or owing or to any right of distress or action that may have arisen under these presents prior to such re-entry.

Covenant by lessor;

5. THE LESSOR doth hereby covenant with the lessees, THAT they, paying the rents and royalties hereby reserved and made payable at the times and in the manner hereinbefore appointed for payment thereof respectively, and performing and observing all the covenants and agreements by the lessees herein contained,

—for quiet enjoyment (*o*).

may peaceably and quietly hold, use, occupy, and enjoy the premises hereinbefore demised and granted, subject as hereinbefore expressed, during the said term of —— years, without any interruption or disturbance by the lessor, or any person lawfully claiming any estate in the same premises or any part thereof, through or under him.

Arbitration clause.

6. IF any difference shall arise between the lessor and the lessees touching [*remainder of arbitration clause, as in clause* 16 *of Precedent IV.*] (*p*). IN WITNESS, &c.

(*n*) That this includes a voluntary liquidation for the purpose of reconstruction or amalgamation only see *Horsey Estate* v. *Steiger, &c. Co.*, [1898] 2 Q. B. 259; *Fryer* v. *Ewart*, [1902] A. C. 187.

(*o*) See, as to the extent of this covenant, *Jones* v. *Consolidated, &c. Collieries*, [1916] 1 K. B. 123.

(*p*) It may be convenient in a lease of this length and complexity to have a marginal abstract, which may be taken from that given in the margin of the Precedent. If this is done, it may be advisable to add the following clause :—

Marginal notes not to affect the construction.

"7. The marginal notes placed opposite the several clauses of these presents, and indicating the contents or objects of such clauses, shall not be taken as part of this lease or in any manner affect the construction thereof."

XX.

LEASE *of* FREEHOLD HOUSE *by* MORTGAGOR *and* MORTGAGEE (*q*).

PRECEDENT XX. — BY MORTGAGOR AND MORTGAGEE

THIS LEASE, made the —— day of, BETWEEN A., of, &c. [*mortgagor*] (who is entitled in fee simple in possession to the hereditaments hereinafter described, subject to a Mortgage dated the —— day of ——, and is herein called "the owner," which expression, where appropriate, includes his successors in title), of the first part (*r*), B., of, &c. [*mortgagee*] [who by virtue of the Mortgage [and of the Law of Property Act, 1925] is entitled to the same hereditaments for the residue of a term of 3,000 years from the —— day of —— [*date of Mortgage, or, if Mortgage made before* 1926, *date on which Act commenced*], subject to cesser on redemption] (herein called "the mortgagee," which expression, where appropriate, includes persons entitled under the Mortgage), of the second part, and C., of, &c. (herein called "the lessee," which expression includes his successors in title), of the third part, WITNESSETH that in consideration of the rent hereinafter reserved, and of the covenants on the part of the lessee hereinafter contained :— Parties.

1. The owner, with the consent of the mortgagee, Doth hereby demise, and the mortgagee according to his estate and interest, Doth hereby demise and confirm, unto the lessee [*parcels as in Precedent VI., or as the case may be*], TO HOLD the premises [except as aforesaid] UNTO the lessee for the term of —— years from the date of these presents [the —— day of ——], YIELDING therefor during the term hereby granted unto the owner until notice as hereinafter mentioned and thereafter YIELDING unto the mortgagee during the residue of the term hereby granted, the yearly rent of £—— clear of all deductions by equal half-yearly [quarterly] payments on the —— day of —— [&c.] in every year, the first of such payments to be made on the —— day of —— next [and the last to be made in advance Demise. Habendum. Reddendum.

(*q*) This Precedent is applicable either where the mortgage was made before 1882 or, if made after 1881, where the statutory powers of leasing conferred on mortgagors have been excluded : see L. P. Act, 1925, sect. 99, replacing sect. 18 of the C. Act, 1881, and see MORTGAGES, General Remarks. The statutory powers of the mortgagor are often excluded by the mortgage deed. As to a lease made before the mortgage, see *Re Ind, Coope & Co.*, [1911] 2 Ch. 223. As to a lease by mortgagor and mortgagee (where the house alone was mortgaged) of house and furniture belonging to mortgagor, and apportionment of rent as betweeen mortgagee and judgment creditor, see *Hoare* v. *Hove Bungalows* (1912), 56 Sol. J. 686.

(*r*) In the preceding edition the mortgagee was made the first party, but, now that the borrower retains the legal estate in fee simple (see MORTGAGES, General Remarks), it is thought that he should take precedence, but the point is one rather of practice than of principle. Other differences in form can be made if by charge by way of legal mortgage.

PRECEDENT XX.

BY MORTGAGOR AND MORTGAGEE.

on the —— day of —— immediately preceding the expiration of the term hereby granted (*s*).]

Proviso that rent shall be paid to the mortgagor until notice by the mortgagee.

PROVIDED that henceforth and until the mortgagee shall require the payment of the said rent to him, and give to the lessee, or leave at or upon the premises or otherwise give or serve in the manner prescribed by law (*u*), a notice in writing requiring such payment, the said rent shall be paid to the owner, and his receipt shall be a sufficient discharge for the same : PROVIDED ALSO that if at any time prior to such notice having been given or served as aforesaid, any part of the said rent shall be in arrear for twenty-one days, whether legally demanded or not, the owner may enter and distrain upon the premises for the arrears of the said rent, and dispose of the distress or distresses then and there found as landlords may by law do for rent in arrear, to the intent that thereby the arrears so due and all costs occasioned by the said rent being so in arrear may be satisfied (*x*).

Power for mortgagor to enter and distrain.

Covenants by lessee;

2. THE LESSEE doth hereby covenant with the owner and also as a separate covenant with the mortgagee, that the lessee, during the said term, (1) WILL pay unto the owner until such notice shall have been given or served by the mortgagee and thenceforth unto the mortgagee the rent hereinbefore reserved (including any proportionate part thereof) on the days and in manner aforesaid : (2) WILL pay all rates, taxes and outgoings now payable or hereafter to become payable in respect of the premises : (3) WILL keep the premises insured against loss or damage by fire [or aircraft] in such office as the person for the time being in receipt of the said rent shall approve; AND will when required, produce to the owner or to the mortgagee the policy and the current year's premium receipt; AND will expend all money received in respect of such insurance in reinstating or repairing the premises so destroyed or damaged : (4) WILL keep the premises in good condition and repair and without any alteration except such as the owner (until notice shall be given or served by the mortgagee), or the mortgagee (after such notice as aforesaid) shall approve [*or the fuller covenant to repair and make no alteration, as in covenants* (3) *and* (4) *of Precedent X. with necessary variations*] : AND at the expiration or sooner determination of the term hereby granted so yield up the

—and rates, &c. :

—keep premises insured;

—and in repair;

—yield up at end of term :

(*s*) See not (*g*) to Precedent VI.

(*u*) See L. P. Act, 1925, sect. 196.

(*x*) See *Reece* v. *Strousberg* (1885), 54 L. T. 133; *Woolston* v. *Ross*, [1900] 1 Ch. 788. The appointment of a receiver by the mortgagee operates as if the mortgagee were in possession : see L. P. Act, 1925, sect. 99, sub-sect. 19). As to actions for possession by mortgagors, see sect. 98 (replacing sect. 25, sub-sect. (5) of the J. Act, 1873).

same to the person who shall be entitled to the reversion immediately expectant on the determination of this demise : (5) WILL permit the owner, or the mortgagee, or the agents, surveyors and workmen of either of them at all reasonable times during the term hereby granted to enter upon the premises to inspect the same : [*Continue, if desired, as in covenants* (6) *and* (7) *of Precedent X., substituting in covenant* (7) "the person giving such notice" *for* "the lessor"] : (6) WILL not at any time during the term hereby granted carry on [*&c., as in covenant* (6) *of Precedent VI.*] : (7) WILL not assign, underlet or part with the possession of the premises or any part thereof without the consent in writing of the owner (until such notice be given or served by the mortgagee), or of the mortgagee (after such notice as aforesaid) : PROVIDED that such notice shall not be unreasonably withheld.

PRECEDENT XX.

BY MORTGAGOR AND MORTGAGEE.

—permit landlord to inspect;

—use as dwelling-house only;

—not to assign or underlet.

3. IF, and whenever any part of the said rent shall be in arrear for thirty [twenty-one] days, whether legally demanded or not, or there shall be a breach of any of the covenants by the lessee herein contained, either the owner (until such notice shall have been given by the mortgagee) or the mortgagee may re-enter upon the premises and immediately thereupon the said term of —— years [*the term granted by this demise*] shall determine.

Proviso for re-entry.

4. EACH of them, the owner and the mortgagee, so far as relates to his own acts and the acts of all persons claiming through or under him, doth hereby covenant with the lessee [*for quiet enjoyment, as in Precedent VI., substituting for the words* "by the lessor, or any person claiming through him," *the words* "by the owner and the mortgagee, or either of them"]. IN WITNESS, &c.

Covenant by mortgagor and mortgagee for quiet enjoyment.

XXI.

LICENCE *to* ASSIGN *a* LEASE (*y*).

PRECEDENT XXI.

LICENCE TO ASSIGN.

KNOW ALL MEN BY THESE PRESENTS that A., of, &c. [*lessor*], Doth hereby grant unto B., of, &c. [*lessee*], licence to assign all his estate, term, and interest in the hereditaments comprised in a lease, dated, &c., and made between [*parties*], unto —— of ——, subject to the payment of the rent reserved by, and the performance and observance of the covenants by the lessee and conditions contained in the lease, and henceforth to be paid, performed, and observed. AS WITNESS, &c.

Grant of licence.

(*y*) Formerly, if a licence were once given to do an act covenanted not to be done, or a forfeiture incurred by breach of a condition in a lease were once waived, the restrictive covenant or condition was in general wholly gone, and could not afterwards be enforced. See *Dumpor's Case*, 1 Smith's Leading

XXII.

PRECEDENT XXII.

SURRENDER OF LEASE.

SURRENDER *of a* LEASE.

Parties. Recital of lease.

THIS SURRENDER, made, &c., BETWEEN A. B., of, &c. [*executor of lessee*] (herein called "the executor"), of the one part, and C. D., of, &c. [*lessor*] (herein called "the lessor"), of the other part. WHEREAS (*z*), by a Lease (herein called "the lease"), dated, &c., and made between the lessor, of the one part, and E. B. (herein called "the original lessee"), of the other part, ALL THAT parcel of ground, situate, &c., and also the messuage or dwelling-house, stables, and coach-house thereon erected, and numbered — in —— Street aforesaid, were demised to the original lessee for the term of —— years from the —— day of ——, ——, at the yearly rent of £——, and subject to the covenants by the lessee and conditions therein contained; AND WHEREAS the original lessee died on the —— day of ——, having by his Will, dated the —— day of ——, appointed his son, the executor, sole executor thereof, who proved the same Will in the —— Registry on the —— day of ——: AND WHEREAS the covenants by the lessee, and conditions contained in the lease, have not been fully performed and observed, the said messuage, stables, and coach-house have become greatly dilapidated, and the lessor, at the request of the executor, has agreed to accept a surrender of the premises comprised in the lease in satisfaction of all claims and demands in respect of such dilapidations or otherwise under the lease. NOW THIS DEED WITNESSETH, that in pur-

Of will of lessee.

That lessee's covenants have not been performed.

Of agreement for surrender.

Witnesseth.

Cases, and notes thereto. But, by the joint effect of the L. P. Act, 1859, sects. 1 and 2, and the L. P. Act, 1860, sect. 6, the operation of such a licence or waiver was confined to the actual act licensed or forfeiture waived. These provisions are now replaced by sects. 143 and 148 of the L. P. Act, 1925. Apart from provision in the lease to the contrary, no fine can be exacted for the licence, but this does not preclude the payment of a reasonable sum for any expense incurred (see sect. 144, which replaces sect. 3 of the C. Act, 1892; *Re Cosh*, [1897] 1 Ch. 9; *Waite* v. *Jennings*, [1906] 2 K. B. 11; *Andrew* v. *Bridgeman*, [1908] 1 K. B. 596; *West* v. *Gwynne*, [1911] 2 Ch. 1). If, as frequently happens, there are other leases of the same date and between the same parties, the deed should commence with the words, "TO ALL TO WHOM THESE PRESENTS SHALL COME, A., of, &c., sends greeting"; the lease should be recited, setting out the parcels, and the covenant against assignment; and if the grantee be not the original lessee, the fact that it has become vested in the grantee with the licence of the lessor should be recited; also if the grantor be not the original lessor, the fact that the reversion has become vested in the grantor should be recited; after the recitals should follow the words, "NOW THESE PRESENTS WITNESS that the said A."; and the words "premises comprised in the lease," should be substituted for "hereditaments," &c.

(*z*) If the surrender is made by indorsement this recital will not be required.

PRECEDENT XXII.

SURRENDER OF LEASE.

suance of the said agreement, and in consideration of the premises, the executor, as PERSONAL REPRESENTATIVE of the original lessee, Doth hereby assign and surrender unto the lessor, all the hereditaments comprised in and demised by the lease, TO THE INTENT that the residue now to come of the said term of —— years granted by the lease may be merged in the reversion expectant thereon, and by that means become extinguished (*a*). IN WITNESS, &C.

Surrender.

To the intent that the term may merge.

(*a*) As to the effect of a surrender to the freeholder by a lessee of his leasehold reversion where the lessee has made an underlease, see *Plummer* v. *David*, [1920] 1 K. B. 326.

As to the powers of a mortgagor and mortgagee in possession to accept surrenders, see L. P. Act, 1925, sect. 100, set out in MORTGAGES under General Remarks.

MORTGAGES.

General Remarks.

New mode of mortgaging land.

Although the general principles of the law of mortgage remain substantially unaffected by the new law, an important alteration is made in the mode of creating legal mortgages of land.

Mortgage of freeholds.

Freehold land, instead of being conveyed to the mortgagee in fee simple, must now be demised to him for a long term of years, subject to cesser on redemption, or in the alternative be charged by way of legal mortgage (as to which see later). The effect of this method is that a legal owner in fee simple retains his fee simple estate, subject to the legal term created by the mortgage, instead of, as formerly, being left merely with an equity of redemption. So on a subsequent mortgage he can create a further legal term for a period longer by one day than the immediately prior existing term. This mode of mortgaging by demise for a long term is, of course, not new, but except in special cases had been generally abandoned (see Coote on Mortgages (1912), pp. 112, &c.).

L. P. Act, 1925, s. 85.

The statutory provisions are contained in sect. 85 of the L. P. Act, 1925, which is as follows :—

> **85.**—(1) A mortgage of an estate in fee simple shall only be capable of being effected at law either by a demise for a term of years absolute, subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage;
>
> Provided that a first mortgagee shall have the same right to the possession of documents as if his security included the fee simple.
>
> (2) Any purported conveyance of an estate in fee simple by way of mortgage made after the commencement of this Act shall (to the extent of the estate of the mortgagor) operate as a demise of the land to the mortgagee for a term of years absolute, without impeachment for waste, but subject to cesser on redemption, in manner following, namely: —
>
> (a) A first or only mortgagee shall take a term of three thousand years from the date of the mortgage:
>
> (b) A second or subsequent mortgagee shall take a term (commencing from the date of the mortgage) one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee:
>
> and, in this subsection, any such purported conveyance as aforesaid includes an absolute conveyance with a deed of defeasance and any

other assurance which, but for this subsection, would operate in effect to vest the fee simple in a mortgagee subject to redemption.

(3) This section applies whether or not the land is registered under the Land Registration Act, 1925, or the mortgage is expressed to be made by way of trust for sale or otherwise.

(4) Without prejudice to the provisions of this Act respecting legal and equitable powers, every power to mortgage or to lend money on mortgage of an estate in fee simple shall be construed as a power to mortgage the estate for a term of years absolute, without impeachment for waste, or by a charge by way of legal mortgage or to lend on such security.

Mortgage of leaseholds.

Mortgages of leasehold land have hitherto been effected either (a) by assignment of the lease-term or (b) by sub-demise of that term, but now must in all cases be made either (a) by sub-demise for a term less by one day at least than the lease-term, and on a subsequent mortgage for a term longer by one day than the immediately prior mortgage-term or (b) by a charge by deed expressed to be by way of legal mortgage.

L. P. Act, 1925, s. 86.

The statutory provisions are contained in sect. 86 of the L. P. Act, 1925, which is as follows :—

86.—(1) A mortgage of a term of years absolute shall only be capable of being effected at law either by a subdemise for a term of years absolute, less by one day at least than the term vested in the mortgagor, and subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage; and where a licence to subdemise by way of mortgage is required, such licence shall not be unreasonably refused:

Provided that a first mortgagee shall have the same right to the possession of documents as if his security had been effected by assignment.

(2) Any purported assignment of a term of years absolute by way of mortgage made after the commencement of this Act shall (to the extent of the estate of the mortgagor) operate as a subdemise of the leasehold land to the mortgagee for a term of years absolute, but subject to cesser on redemption, in manner following, namely :—

(a) The term to be taken by a first or only mortgagee shall be ten days less than the term expressed to be assigned:

(b) The term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee, if the length of the last mentioned term permits, and in any case for a term less by one day at least than the term expressed to be assigned:

and, in this subsection, any such purported assignment as aforesaid includes an absolute assignment with a deed of defeasance and any other assurance which, but for this subsection, would operate in effect to vest the term of the mortgagor in a mortgagee subject to redemption.

(3) This section applies whether or not the land is registered under the Land Registration Act, 1925, or the mortgage is made by

way of sub-mortgage of a term of years absolute, or is expressed to be by way of trust for sale or otherwise.

(4) Without prejudice to the provisions of this Act respecting legal and equitable powers, every power to mortgage for or to lend money on mortgage of a term of years absolute by way of assignment shall be construed as a power to mortgage the term by sub-demise for a term of years absolute or by a charge by way of legal mortgage, or to lend on such security.

Pre-existing mortgages.

Mortgages in fee simple of freeholds, or by assignment of leaseholds, which immediately before January 1, 1926, were still existing are, as from that date, converted into mortgages for a term or sub-term as the case may be: see L. P. Act, 1925, First Schedule, Pt. VII., and Pt. VIII.

Charge by way of legal mortgage.

From the above sections it appears that a legal mortgage of land may also be created by "a charge by deed expressed to be by way of legal mortgage," either of the fee simple or of a term of years absolute. This charge is one of the charges over land which are capable of subsisting or of being conveyed or created at law (see L. P. Act, 1925, sect. 1, sub-sect. (2)), and is a "legal mortgage" (see L. P. Act, 1925, sect. 205 sub-sect. (1) (xvi)) and is often shortly referred to as a "legal charge." This charge confers the same protection, powers and remedies *as if* a mortgage term had been created, and it may be asked, Why then have a mortgage by demise?

The answer to this question may be that the Act does not say that a term or sub-term is actually created on the execution of the charge, and some lenders may prefer an actual to a merely notional demise. It is difficult to foresee how the practice will ultimately crystallise.

L. P. Act, 1925, s. 87.

The statutory effect of a charge by way of legal mortgage is explained in sect. 87 of the L. P. Act, 1925, which is as follows:—

87.—(1) Where a legal mortgage of land is created by a charge by deed expressed to be by way of legal mortgage, the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits, or any of them) as if—

(a) where the mortgage is a mortgage of an estate in fee simple, a mortgage term for three thousand years without impeachment of waste had been thereby created in favour of the mortgagee; and

(b) where the mortgage is a mortgage of a term of years absolute, a sub-term less by one day than the term vested in the mortgagor had been thereby created in favour of the mortgagee.

Declaration converting existing mortgage into legal charge.

(2) Where an estate vested in a mortgagee immediately before the commencement of this Act has by virtue of this Act been converted into a term of years absolute or sub-term, the mortgagee may, by a declaration in writing to that effect signed by him, convert the mortgage into a charge by way of legal mortgage, and

in that case the mortgage term shall be extinguished in the inheritance or in the head term as the case may be, and the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits or any of them) as if the mortgage term or sub-term had remained subsisting.

The power conferred by this subsection may be exercised by a mortgagee notwithstanding that he is a trustee or personal representative.

(3) Such declaration shall not affect the priority of the mortgagee or his right to retain possession of documents, nor affect his title to or right over any fixtures or chattels personal comprised in the mortgage.

Forms of legal charges.

Precedents I. and II. are forms of charges by way of legal mortgage based upon the statutory example: see Precedent XXXV.

A special "statutory" form is also given in the Act (see Precedent XXXIX.) which has the effect prescribed in s. 117. But hitherto "statutory" forms of mortgage have not been frequently used in practice.

A form of declaration under sub-sect. (2) will be found under DECLARATIONS, Precedent VII.

Having thus examined the mode of creating legal mortgages of land, it may be useful to refer to the form and contents of the mortgage deed in the order of the clauses as they are placed.

Definition of parties.

In the following Precedents the interpretation clause is placed first and the mortgagor is generally called "the owner," as this expression is thought to be consonant with his true position under the new scheme, seeing that, in the case of freeholds, he retains the fee simple, and, in the case of leaseholds, the leasehold reversion. This expression is extended to include "persons entitled to redeem this security." In the last edition these words were preceded by "persons deriving title under him or," but it is thought that this is redundant and may be omitted, as being included in the class of persons entitled to redeem, for persons deriving title under the mortgagor are entitled to redeem, although all persons entitled to redeem do not necessarily derive title under the mortgagor (*e.g.*, see Fisher on Mortgages (1910), 728, citing *Fletcher* v. *Bird* (1896), unreported, but set out in Appendix, p. 1025).

The mortgagee is defined to include "persons deriving title under him."

Recitals in mortgages.

In mortgages recitals are not always necessary and are often omitted, but where there are recitals it is usual to insert immediately before the operative part an introductory recital of the agreement for the loan. It is, however, generally advisable

to insert a recital as to the title of the mortgagor, even when he is seised of the legal estate in fee simple free from incumbrances, as a mortgage is sometimes a convenient root of title on a subsequent sale. This is now more important as the mortgagee on sale can pass the immediate reversion to the purchaser.

Where there was a prior mortgage it was formerly the practice merely to refer to it in the habendum, but it is generally more convenient to recite such prior mortgage, as such a recital shows at once that the mortgage to be created is not a first mortgage, but is subject to the prior mortgage : see Dav. Prec. Conv. (1881), Vol. II., Pt. II., p. 10).

Covenant to pay principal and interest.

In the present edition the covenant for payment of the principal debt (usually six calendar months from the date of the mortgage) with interest until repayment, is now placed as the first clause of the operative part, thus following what is believed to be the more usual practice. This practice " has the advantage of making the mortgage appear to be, as it really is, a collateral security for the debt " (see Dav. Prec. Conv., 4th ed. (1881), Vol. II., Pt. II., p. 13) and is that adopted by the Legislature : see Form of Charge by way of Legal Mortgage, L. P. Act, 1925, Fifth Schedule, Form No. 1, set out below as Precedent XXXV.).

In the absence of such a covenant, or of words amounting to an express agreement to pay, the mortgage or agreement, though under seal, would not render the debt secured more than a simple contract debt. The distinction, however, between specialty and simple contract debts is now of little importance, the priority of the former in the administration of estates having been abolished by the A. E. Act, 1869. That Act is still in force as to deaths before 1926, but as to later deaths is now repealed by the A. E. Act, 1925 (see Second Schedule, Part I., and sect. 32). In cases other than mortgages of " land " within the meaning of the R. P. Limitation Act, 1874, specialty debts still have the advantage over the latter, that they can be recovered at any time within twenty years after cause of action accrued, or removal of disability, as the case may be, but in mortgages of land a mortgagor's covenant in the mortgage for payment of the money secured has been held to be deprived of this advantage by sect. 8 of that Act : see *Re Witham*, [1922] 2 Ch. 413. The section does not, however, apply to a simple contract debt charged on land so as to extend the period of recovery to twelve years : *Barnes* v. *Glenton*, [1899] 1 Q. B. 885; nor does it apply to the bond or covenant of a surety : see the Mercantile Law Amendment Act, 1856, and *Re Powers* (1885), 30 Ch. D. 291; *Re Frisby* (1889), 43 Ch. D. 106; *Re Brown*, [1893] 2 Ch. 300; *Bradford Old Bank* v. *Sutcliffe*, [1918] 2 K. B. 833.

As to the right of a mortgagee selling under his power of sale to retain all arrears of interest, notwithstanding sect. 42 of the R. P. Limitation Act, 1833, see *Re Marshfield* (1887), 34 Ch. D. 721; *Re Thomson*, [1920] 1 Ch. 508; but as to his position in a foreclosure action, see *Harpur* v. *Buchanan*, [1919] 1 I. R. 1.

And generally as to the effect of the covenant to pay principal and interest, see Dav. Prec. Conv., 4th ed. (1881), Vol. II., Pt. II., pp. 17—31.

Covenants for title when implied.

The statutory covenants previously implied by the use of certain expressions in a mortgage are now extended to a charge, and those in a mortgage of leaseholds, to freeholds subject to a rentcharge.

In the case of a mortgage or charge made by an absolute owner "as beneficial owner" the statutory covenants for title set out in Part III. of the Second Schedule to the L. P. Act, 1925 (see sect. 76, sub-sect. (1) (c)), will be implied, and in the case of freeholds subject to a rentcharge or of leaseholds the further covenant set out in Part IV. of that Schedule: see sect. 76 (1) (d)).

Where the mortgage is made by a person in a fiduciary capacity or under an Order of the Court, the statutory covenant against incumbrances set out in Part VI. of that Schedule will be implied by his conveying and being expressed to convey "as trustee," "as mortgagee," "as personal representative of —— deceased," "as committee of ——, a lunatic," "as receiver of ——, a defective," or "under the —— Order of the Court": see sect. 76, sub-sect. (1) (f)).

See further as to covenants for title implied by law: CONVEYANCES, General Remarks, where sect. 76 and the Second Schedule are set out.

Operative words in legal mortgage of freeholds.

Hitherto, the operative part of a mortgage of a legal estate in freeholds was similar to that of a conveyance on sale, being a conveyance of the whole estate in fee simple, but subject to redemption. Under the system now imposed by law, the owner can only demise the land for a term, subject to redemption. The L. P. Act, 1925, does not prescribe the length of the term for which the land is to be demised (see sect. 85, sub-sect. (1)), but a term of 3,000 years is substituted for a first mortgage made after 1925, which purports to convey the fee simple, and a longer term by one day in each case of a second or subsequent mortgage (see sect. 85, sub-sect. (2), and the transitional provisions in Part VII of the First Schedule in the case of mortgages in fee simple existing at the date of the commencement of the Act). The demise may, therefore, following the other statutory provisions, appropriately be made in the case of a first mortgage of

freeholds for a term of 3,000 years from the date of the mortgage without impeachment of waste, subject to a proviso for cesser on redemption. As to cesser of the mortgage term on redemption, see sects. 5 and 116 of the same Act.

Operative words in legal mortgage of leaseholds.

In a mortgage of a legal estate in leaseholds (which must now be by sub-demise, see above) the owner of the term will, as before, demise the term to the mortgagee for the residue of the term less a few days (one day at least) subject to redemption. Clauses which were previously usual, such as declaring a trust of the nominal reversion with power to appoint new trustees and appointing the mortgagee attorney, may now generally be omitted, having regard to the power of the mortgagee on realising his security to vest the head-term in a purchaser on sale, with the important exception where part only of the leasehold land is mortgaged : see L. P. Act, 1925, sect. 89, set out below and remarks thereon, and note to Precedent V.).

Proviso for redemption.

In a legal mortgage of land it might be sufficient to add after the habendum the words "Subject to redemption on payment of all money hereby secured." These words would show that the term created was merely a mortgage term, and all the statutory provisions affecting mortgage terms would follow. It seems, however, more in accordance with precedent that the mortgagee should expressly agree to do what the mortgagor by virtue of his right of redemption is entitled to require, and the proviso for redemption in the following precedents is based upon that principle. It should, therefore, be provided that on payment off of the mortgage, the mortgagee will either give the statutory receipt or surrender the term or as the mortgagor shall direct.

Statutory receipt on discharge of mortgage.

The statutory receipt above referred to is an innovation. By s. 115 of the L. P. Act, 1925, a receipt for all money secured by the mortgage, (a) endorsed on, (b) written at the foot of, or (c) annexed to the mortgage, which (d) states the name of the person who pays the money and (e) is executed by the legal mortgagee (including a legal chargee), being the person legally entitled to give such receipt, has the effect and operates in the manner mentioned in that section. The section is as follows :—

L. P. Act, 1925, s. 115.

Operation of receipt as surrender or reconveyance;

115.—(1) A receipt endorsed on, written at the foot of, or annexed to, a mortgage for all money thereby secured, which states the name of the person who pays the money and is executed by the chargee by way of legal mortgage or the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the mortgage money shall operate, without any reconveyance, surrender, or release—

(a) Where a mortgage takes effect by demise or subdemise, as a surrender of the term, so as to determine the term or merge the same in the reversion immediately expectant thereon ;

(b) Where the mortgage does not take effect by demise or sub-

demise as a reconveyance thereof to the extent of the interest which is the subject matter of the mortgage, to the person who immediately before the execution of the receipt was entitled to the equity of redemption;

and in either case, as a discharge of the mortgaged property from all principal money and interest secured by, and from all claims under the mortgage, but without prejudice to any term or other interest which is paramount to the estate or interest of the mortgagee or other person in whom the mortgaged property was vested.

—or as a transfer in certain cases.

(2) Provided that where by the receipt the money appears to have been paid by a person who is not entitled to the immediate equity of redemption, the receipt shall operate as if the benefit of the mortgage had by deed been transferred to him; unless—

(a) it is otherwise expressly provided; or

(b) the mortgage is paid off out of capital money, or other money in the hands of a personal representative or trustee properly applicable for the discharge of the mortgage, and it is not expressly provided that the receipt is to operate as a transfer.

(3) Nothing in this section confers on a mortgagor a right to keep alive a mortgage paid off by him, so as to affect prejudicially any subsequent incumbrancer; and where there is no right to keep the mortgage alive, the receipt does not operate as a transfer.

Reconveyance may be required.

(4) This section does not affect the right of any person to require a reassignment, surrender, release, or transfer to be executed in lieu of a receipt.

Form of receipt.

(5) A receipt may be given in the form contained in the Third Schedule to this Act, with such variations and additions, if any, as may be deemed expedient; and where it takes effect under this section, it shall (subject as hereinafter provided) be liable to the same stamp duty as if it were a reconveyance under seal.

Covenants implied.

(6) In a receipt given under this section the same covenants shall be implied as if the person who executes the receipt had by deed been expressed to convey the property as mortgagee, subject to any interest which is paramount to the mortgage.

Where more than one deed.

(7) Where the mortgage consists of a mortgage and a further charge or of more than one deed, it shall be sufficient for the purposes of this section, if the receipt refers either to all the deeds whereby the mortgage money is secured or to the aggregate amount of the mortgage money thereby secured and for the time being owing, and is endorsed on, written at the foot of, or annexed to, one of the mortgage deeds.

Charge by way of legal mortgage.

(8) This section applies to the discharge of a charge by way of legal mortgage, and to the discharge of a mortgage, whether made by way of statutory mortgage or not, executed before or after the commencement of this Act, but only as respects discharges effected after such commencement.

Building, &c., societies.

(9) The provisions of this section relating to the operation of a receipt shall (in substitution for the like statutory provisions relating to receipts given by or on behalf of a building, friendly, industrial or provident society) apply to the discharge of a mortgage made to any such society, provided that the receipt is executed in the manner required by the statute relating to the society, but nothing in this section shall render a receipt given by or on behalf of any such society

liable to any stamp duty which would not have been otherwise payable.

Registered charge.

(10) This section does not apply to the discharge of a charge or incumbrance registered under the Land Registration Act, 1925.

Meaning of "mortgaged property."

(11) In this section "mortgaged property" means the property remaining subject to the mortgage at the date of the receipt.

Form of receipt.

No precise form of receipt is prescribed for the discharge of an ordinary mortgage or charge, but a statutory example is given in Form No. 2 of the Third Schedule (see Precedent XXXVIII.). In the case of a receipt discharging a "statutory" mortgage or charge, Form No. 5 of the Fourth Schedule (see Precedent XLIII.) is applicable. As to the mode of discharging a registered charge or sub-charge, see L. R. Act, 1925, sects. 35, 36, and L. R. Rules, sects. 151, 152.

Operation of receipt.

The operation of a receipt under s. 115 of the L. P. Act, 1925, should be carefully scrutinised. In most cases a receipt in the manner prescribed by the statute will be taken, but as there is no saving of duty (except in the cases mentioned in sub-sect. (9)) a surrender or other form of reconveyance may sometimes be preferred.

Payment by instalments.

It is sometimes part of the arrangement that the principal sum and interest shall be paid by the mortgagor by instalments. In such a case the statutory power of sale can be exercised if an instalment (which presumably includes "some interest") is in arrear and unpaid for two months after becoming due: see *Walsh* v. *Derrick* (1903), 19 T. L. R. 209, and L. P. Act, 1925, sect. 102 (ii), replacing C. Act, 1881, sect. 20 (ii), and see Precedent VIII.).

Power to mortgagor to anticipate payment of part of principal;

The above clause is also sometimes followed by a power for the mortgagor to anticipate payment of the mortgage money and pay any part of the principal in advance on giving notice to the mortgagee, but not so as to interfere with the regular payment of the instalments: see Precedent VIII.). This power may, if desired, be given to the mortgagor, even where there is no provision for payment by instalments.

— to redeem part of mortgaged land.

The mortgagor is also sometimes given power to redeem part of the land mortgaged at an ascertained value: see Precedent VIII.

Collateral bargain when good.

All the above provisions, which are ancillary to the proviso for redemption, are unobjectionable so far as they are extensions of the right of the mortgagor to redeem, or limit the power of the mortgagee to enforce his security. A collateral bargain between the mortgagor and the mortgagee is good so long as it is not (a) unfair or unconscionable or (b) a clog on the equity of redemption or (c) inconsistent with or repugnant to the contractual or

equitable right to redeem : *Kreglinger* v. *New Patagonia Meat, &c., Co.*, [1914] A. C. 25; *Re Cuban Land, &c., Co.*, [1921] 2 Ch. 147.

Capitalisation of interest.

It is usual in a mortgage of a reversionary interest to insert a covenant by the mortgagor to the effect that interest due and unpaid after certain fixed periods shall carry interest and be added to the principal sum originally advanced as if such unpaid interest were a further advance. This arrangement is valid in law (see *Clarkson* v. *Henderson* (1880), 14 Ch. D. 348); and where an arrear of interest is assigned, the mortgagor being a party to such assignment, a contract will be presumed that the interest is to be capitalised : see *Agnew* v. *King*, [1902] 1 I. R. 471. As to capitalisation by a mortgagee in possession, see *Wrigley* v. *Gill*, [1906] 1 Ch. 165. The expression " capitalisation " may be misleading so far as it suggests that such interest becomes capital for all purposes. Thus it has been held that for the purposes of income tax, the mortgagee cannot claim to be repaid such interest without deduction of that tax : *Re Morris*, [1922] 1 Ch. 126. In the mortgage in that case, however, the agreement was merely to pay compound interest with yearly rests (an arrangement which, in effect, may be compared with the ordinary mortgage to a bank to secure a current account), and did not provide in express terms for the capitalisation of unpaid interest. Whether such an express provision would have led the Court to a different conclusion, or whether in the latter case the provisions of r. 23 of the General Rules applicable to All Schedules of the Income Tax Act, 1918, would have been contravened, was left undecided : see per Warrington, L.J., at p. 135). For forms capitalising interest, see Precedents XVI. and XVII.

Continuance of loan.

So an agreement by the mortgagor not to redeem the security for a certain period is valid if such period is a reasonable one. The fact that the mortgagee also agrees not to call in the principal for a similar period will be taken into consideration as a test of reasonableness : see *Biggs* v. *Hoddinott*, [1898] 2 Ch. 307; *Morgan* v. *Jeffreys*, [1910] 1 Ch. 620.

Also if a mortgagee agrees to postpone his right to enforce his security provided that the interest is *punctually* paid and the covenants performed, such an agreement is strictly enforced. Thus, if the interest is not " punctually " paid, the rights of the mortgagee revive : see *Leeds, &c., Theatre* v. *Broadbent*, [1898] 1 Ch. 343; *Maclaine* v. *Gatty*, [1921] A. C. 376. If, however, covenants have been broken and the mortgagee has by receipt of subsequent interest or otherwise waived the breach, he cannot call in his money until the agreed period has expired : see *Seal*

v. *Gimson* (1914), 110 L. T. 583. For a form of such provisions, see Precedent VI.

Reduction of interest.

The main object of a clause for reduction of interest is to ensure punctual payment at the reduced rate, and such clauses are valid. "An agreement in a mortgage, that, if the interest be punctually paid, the rate shall be reduced, is legal; and if the interest is not paid within the time prescribed, the higher rate of payment will be enforced. On the other hand, an agreement for increasing the rate of interest on failure in punctual payment will be viewed in the light of a penalty, and relieved against in equity. This, after some fluctuation, appears to be the state of the law. The distinction is a somewhat fine one; and when it is considered that, under both forms of agreement, the substance is that, according to the alternative of payment before or after a certain date, interest at a lower or higher rate shall be required, the reasonableness of drawing a distinction may be questioned" : Dav. Prec. Conv., 4th ed., Vol. II., Pt. II., p. 47. See also *Maclaine* v. *Gatty*, [1921] A. C. 376, and, for a form of this clause, Precedent VI.

Deduction of income tax.

If the mortgagee desires to throw upon the mortgagor the burden of income tax payable on interest at a fixed rate, he cannot do so by merely inserting in the covenant the words "free of income tax" (see Income Tax Act, 1918, First Schedule, "All Schedules Rules," r. 23), but he may, apparently, take a covenant from the mortgagor to pay interest at such rate as after deduction of income tax shall leave a net sum equal to a half-year's interest at the rate of —— per cent. per annum on the principal money secured : see *Booth* v. *Booth*, [1922] 1 K. B. 66; *Burroughes* v. *Abbott*, [1922] 1 Ch. 86. As to the right of a mortgagor to deduct tax from interest paid to the mortgagee, see Income Tax Act, 1918, First Schedule, "All Schedules Rules," rr. 19, 23; *Re Morris*, [1922] 1 Ch. 126.

Attornment clause.

The object of an attornment clause (as to which see Dav. Prec. Conv., Vol. II., Pt. II., 4th ed., pp. 92 and 107) was formerly to give a remedy, by distress, for recovery of interest or other payments in arrear when the mortgagor was himself in possession. The tenancy founded on an attornment clause ends with the death of the mortgagor, and a new tenancy at will between the personal representatives of the deceased mortgagor (or after assent the person entitled under a devise or bequest), on the one hand, and the mortgagee, on the other, is not to be inferred merely from occupation of the property and payment of interest : *Scobie* v. *Collins*, [1895] 1 Q. B. 375.

That a mortgagee may avail himself of an attornment clause in his mortgage deed, without incurring the responsibilities of

a mortgagee in possession, appears to be the better view, notwithstanding doubts expressed in some cases (see Fisher on Mortgages (1910), p. 889); but a clause negativing such result is generally inserted.

Having regard to the provisions of sect. 6 of the B. S. Act, 1878, to prevent a power of distress being given by way of security for payment of a debt, it has been held that, while such a clause is to be deemed a bill of sale of any chattel that may be distrained under it, and is therefore void as to such chattels unless the deed containing it be registered (*Green* v. *Marsh*, [1892] 2 Q. B. 330), yet an attornment clause contained in a mortgage deed does not destroy the relation of landlord and tenant created by it between the mortgagor and the mortgagee, and presumably it does not avoid the covenant for payment of principal and interest, or any other part of the deed except in respect of the chattels comprised in the deed : *Mumford* v. *Collier* (1890), 25 Q. B. D. 279; *Re Burdett* (1888), 20 Q. B. D. 310.

In cases, therefore, where the mortgagor is in occupation, it may still be proper to insert an attornment clause (of which a form is given in Precedent IV.), since it gives to the mortgagee the right of recovering immediate possession under Ord. III., r. 6 : see *Kemp* v. *Lester*, [1896] 2 Q. B. 162; *Pilkington* v. *Power*, [1910] 1 I. R. 294. Compare *Stokes* v. *Tracey*, [1920] 2 I. R. 444. Apart from this clause, delivery of possession cannot be obtained by summons under R. S. C. 1883, Ord. LV., r. 5A, without a claim for sale or foreclosure : see *Wallis* v. *Griffiths*, [1921] 2 Ch. 301.

If such a clause be inserted, there appears to be no reason for making the amount of rent reserved correspond with the interest payable, but it need be merely nominal.

An attornment to a mortgagee by a lessee holding under a lease from the mortgagor, where the right of redemption is barred, is not affected by the L. P. Act, 1925, sect. 151 : see sub-sect. (2) (b).

Powers of leasing and of accepting surrenders.

The powers of leasing and of accepting surrenders of leases conferred on mortgagors and mortgagees in possession by sect. 18 of the C. Act, 1881, and sect. 3 of the C. Act, 1911, are replaced with variations and additions by sects. 99 and 100 of the L. P. Act, 1925, which are as follows :—

L. P. Act, 1925, s. 99.

99.—(1) A mortgagor of land while in possession shall, as against every incumbrancer, have power to make from time to time any such lease of the mortgaged land, or any part thereof, as is by this section authorised.

(2) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have power to make from time to time any such lease as aforesaid.

(3) The leases which this section authorises are—

(i) agricultural or occupation leases for any term not exceeding twenty-one years, or, in the case of a mortgage made after the commencement of this Act, fifty years; and

(ii) building leases for any term not exceeding ninety-nine years, or, in the case of a mortgage made after the commencement of this Act, nine hundred and ninety-nine years.

(4) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(5) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(8) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute within that time, on the land leased, an improvement for or in connexion with building purposes.

(10) In any such building lease a peppercorn rent or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(11) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee, but the lessee shall not be concerned to see that this provision is complied with.

(12) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

(13) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and has effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(14) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve to or confer on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences:

Provided that the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under

any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

(15) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act and the enactments replaced by this section had not been passed:

Provided that in the case of a mortgage of leasehold land, a lease granted under this section shall reserve a reversion of not less than one day.

(16) Subject as aforesaid this section applies to any mortgage made after the thirty-first day of December, eighteen hundred and eighty-one, but the provisions thereof, or any of them, may, by agreement in writing made after that date, between mortgagor and mortgagee be applied to a mortgage made before that date, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(17) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

(18) For the purposes of this section "mortgagor" does not include an incumbrancer deriving title under the original mortgagor.

(19) The powers of leasing conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by a mortgagee under his statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land, and the mortgagee may, by writing, delegate any of such powers to the receiver.

100.—(1) For the purpose only of enabling a lease authorised under the last preceding section, or under any agreement made pursuant to that section, or by the mortgage deed (in this section referred to as an authorised lease) to be granted, a mortgagor of land while in possession shall, as against every incumbrancer, have by virtue of this Act, power to accept from time to time a surrender of any lease of the mortgaged land or any part thereof comprised in the lease, with or without an exception of or in respect of all or any of the mines and minerals therein, and, on a surrender of the lease so far as it comprises part only of the land or mines and minerals leased, the rent may be apportioned. L. P. Act, 1925, s. 100.

(2) For the same purpose, a mortgagee of land while in possession shall, as against all prior or other incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to accept from time to time any such surrender as aforesaid.

(3) On a surrender of part only of the land or mines and minerals leased, the original lease may be varied, provided that the lease when varied would have been valid as an authorised lease if granted by the person accepting the surrender; and, on a surrender and the making of a new or other lease, whether for the same or for any

extended or other term, and whether subject or not to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may, subject to the provisions of this section, be taken into account in the determination of the amount of the rent to be reserved, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.

(4) Where any consideration for the surrender, other than an agreement to accept an authorised lease, is given by or on behalf of the lessee to or on behalf of the person accepting the surrender, nothing in this section authorises a surrender to a mortgagor without the consent of the incumbrancers, or authorises a surrender to a second or subsequent incumbrancer without the consent of every prior incumbrancer.

(5) No surrender shall, by virtue of this section, be rendered valid unless:—

(a) An authorised lease is granted of the whole of the land or mines and minerals comprised in the surrender to take effect in possession immediately or within one month after the date of the surrender; and

(b) The term certain or other interest granted by the new lease is not less in duration than the unexpired term or interest which would have been subsisting under the original lease if that lease had not been surrendered; and

(c) Where the whole of the land mines and minerals originally leased has been surrendered, the rent reserved by the new lease is not less than the rent which would have been payable under the original lease if it had not been surrendered; or where part only of the land or mines and minerals has been surrendered, the aggregate rents respectively remaining payable or reserved under the original lease and new lease are not less than the rent which would have been payable under the original lease if no partial surrender had been accepted.

(6) A contract to make or accept a surrender under this section may be enforced by or against every person on whom the surrender, if completed, would be binding.

(7) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(8) This section applies to a mortgage made after the thirty-first day of December, nineteen hundred and eleven, but the provisions of this section, or any of them, may, by agreement in writing made after that date, between mortgagor and mortgagee, be applied to a mortgage made before that date, so nevertheless that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(9) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

(10) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve or confer

on the mortgagor or mortgagee, or both, any further or other powers relating to the surrender of leases; and any further or other powers so conferred or reserved shall be exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects and consequences:

Provided that the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

(11) Nothing in this section operates to enable a mortgagor or mortgagee to accept a surrender which could not have been accepted by the mortgagor with the concurrence of all the incumbrancers if this Act and the enactments replaced by this section had not been passed.

(12) For the purposes of this section "mortgagor" does not include an incumbrancer deriving title under the original mortgagor.

(13) The powers of accepting surrenders conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by the mortgagee under the statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land; and the mortgagee may, by writing, delegate any of such powers to the receiver.

The above-mentioned statutory powers, so far as they are conferred on mortgagors, are sometimes excluded by express provision in the mortgage deed, except with the consent of the mortgagee: see Precedent IV. Each case should be considered by the draftsman on its merits and the statutory provisions carefully examined and compared with the powers conferred by previous statutes.

Powers of sale, &c., of the mortgagee.

The statutory powers of sale, insurance, appointment of receiver, and cutting timber, which were conferred by sect. 19 of the C. Act, 1881, and as to the power of sale extended by sect. 4 of the C. Act, 1911, are replaced (with variations) by sect. 101 of the L. P. Act, 1925. This section is as follows:—

L. P. Act, 1925, s. 101.

101.—(1) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):

Power to sell;

(i) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as the mortgagee thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and

—to insure;

(ii) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any

building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the property which or an estate or interest wherein is mortgaged, and the premiums paid for any such insurance shall be a charge on the mortgaged property or estate or interest, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and

—to appoint receiver;

(iii) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or any part thereof; or, if the mortgaged property consists of an interest in income, or of a rentcharge or an annual or other periodical sum, a receiver of that property or any part thereof; and

—to cut timber.

(iv) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract

Extension of power of sale in mortgages after 1911.

(2) Where the mortgage deed is executed after the thirty-first day of December, nineteen hundred and eleven, the power of sale aforesaid includes the following powers as incident thereto (namely):—

(i) A power to impose or reserve or make binding, as far as the law permits, by covenant, condition, or otherwise, on the unsold part of the mortgaged property or any part thereof, or on the purchaser and any property sold, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing:

(ii) A power to sell the mortgaged property, or any part thereof, or all or any mines and minerals apart from the surface:—

(a) With or without a grant or reservation of rights of way, rights of water, easements, rights, and privileges for or connected with building or other purposes in relation to the property remaining in mortgage or any part thereof, or to any property sold: and

(b) With or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged property, and with or without a grant or reservation of powers of working, wayleaves, or rights of way, rights of water and drainage and other powers, easements, rights, and privileges for or connected with mining purposes in relation to the property remaining unsold or any part thereof, or to any property sold: and

(c) With or without covenants by the purchaser to expend money on the land sold.

Mortgage may vary or exclude powers.

(3) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any other section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

(4) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and has effect subject to the terms of the mortgage deed and to the provisions therein contained.

(5) Save as otherwise provided, this section applies where the mortgage deed is executed after the thirty-first day of December, eighteen hundred and eighty-one.

(6) The power of sale conferred by this section includes such power of selling the estate in fee simple or any leasehold reversion as is conferred by the provisions of this Act relating to the realisation of mortgages.

These powers are sometimes extended by the mortgage deed (*e.g.*, as to the power of sale, see Precedent XI.).

Undivided shares in land.

Special provision is now made by sect. 102 of the L. P. Act, 1925, for the case of an existing mortgage of an undivided share in land, in which there can now be no legal estate. The section is as follows :—

L. P. Act, 1925, s. 102.

102.—(1) A person who was before the commencement of this Act a mortgagee of an undivided share in land shall have the same power to sell his share in the proceeds of sale of the land and in the rents and profits thereof until sale, as, independently of this Act, he would have had in regard to the share in the land; and shall also have a right to require the trustees for sale in whom the land is vested to account to him for the income attributable to that share or to appoint a receiver to receive the same from such trustees corresponding to the right which, independently of this Act, he would have had to take possession or to appoint a receiver of the rents and profits attributable to the same share.

(2) The powers conferred by this section are exercisable by the persons deriving title under such mortgagee.

Regulation of exercise of power of sale.

As to powers of sale, the provisions regulating their exercise which were contained in sects. 20 to 22 of the C. Act, 1881, as amended by sect. 5 of the C. Act, 1911, are now replaced by sects. 103 to 107 of the L. P. Act, 1925, which are as follows :—

L. P. Act, 1925, ss. 103-107.

103. A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

Notice.

(i) Notice requiring payment of the mortgage money has been served on the mortgagor or one of two or more mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or

Interest in arrear.

(ii) Some interest under the mortgage is in arrear and unpaid for two months after becoming due; or

Breach of provisions.

(iii) There has been a breach of some provision contained in the mortgage deed or in this Act, or in an enactment replaced by this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

Conveyance on sale.

104.—(1) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold, for such estate and interest therein as he is by this Act authorised to sell or convey or may be the subject of the mortgage, freed from

all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage.

(2) Where a conveyance is made in exercise of the power of sale conferred by this Act, or any enactment replaced by this Act, the title of the purchaser shall not be impeachable on the ground—

(a) that no case had arisen to authorise the sale; or

(b) that due notice was not given; or

(c) where the mortgage is made after the commencement of this Act, that leave of the court, when so required, was not obtained; or

(d) whether the mortgage was made before or after such commencement, that the power was otherwise improperly or irregularly exercised;

and a purchaser is not, either before or on conveyance, concerned to see or inquire whether a case has arisen to authorise the sale, or due notice has been given, or the power is otherwise properly and regularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(3) A conveyance on sale by a mortgagee, made after the commencement of this Act, shall be deemed to have been made in exercise of the power of sale conferred by this Act unless a contrary intention appears.

Application of proceeds of sale.

105. The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses properly incurred by him as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

General provisions as to exercise of power.

106.—(1) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(2) The power of sale conferred by this Act does not affect the right of foreclosure.

(3) The mortgagee shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act, or of any trust connected therewith, or, where the mortgage is executed after the thirty-first day of December, nineteen hundred and eleven, of any power or provision contained in the mortgage deed.

(4) At any time after the power of sale conferred by this Act has become exercisable, the person entitled to exercise the power may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

Mortgagee's receipts, discharges, &c.

107.—(1) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

(2) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act, but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

Form and effect of the conveyance.

An important alteration is made in sect. 21 of the C. Act, 1881 (as amended by sect. 5 of the C. Act, 1911), for now, by sect. 104 (above), a conveyance on sale under the power need no longer be in "professed" exercise of that power: and see sub-sect. (3). Moreover, the power to convey is no longer, as in conveyances since 1881, confined to the estate or interest which was the subject of the mortgage, but extends to "such estate or interest therein as he is by this Act authorised to sell or convey." As to the statutory power to sell the fee simple or leasehold reversion, see sect. 101, sub-sect. (6), set out above; and as to the operation of a conveyance under the power of sale to vest the fee simple or leasehold reversion, see sects. 88 and 89, set out below.

The operation of a conveyance under the power of sale on the estate in fee simple of the mortgagor under a legal mortgage or charge by way of legal mortgage of freeholds, and on the leasehold reversion under a like mortgage or charge of leaseholds (and incidentally also the effect of a foreclosure order and of the acquisition by limitation by the mortgagee), are provided for by sects. 88 and 89 of the L. P. Act, 1925, which are as follows :—

L. P. Act, 1925, ss. 88, 89.

Under mortgage or charge of freeholds.

88.—(1) Where an estate in fee simple has been mortgaged by the creation of a term of years absolute limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale—

(a) the conveyance by him shall operate to vest in the purchaser the fee simple in the land conveyed subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon;

(b) the mortgage term or the charge by way of legal mortgage and any subsequent mortgage term or charges shall merge or be extinguished as respects the land conveyed;

and such conveyance may, as respects the fee simple, be made in the name of the estate owner in whom it is vested.

Under foreclosure order.

(2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall operate to vest the fee simple in him (subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured), and thereupon the mortgage term, if any, shall thereby be merged in the fee simple, and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall thereupon be extinguished.

Where title by limitation.

(3) Where any such mortgagee acquires a title under the Limitation Acts, he, or the persons deriving title under him, may enlarge the mortgage term into a fee simple under the statutory power for that purpose discharged from any legal mortgage affected by the title so acquired, or in the case of a chargee by way of legal mortgage may by deed declare that the fee simple is vested in him discharged as aforesaid, and the same shall vest accordingly.

As to fixtures, &c.

(4) Where the mortgage includes fixtures or chattels personal any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.

Under sub-mortgage.

(5) In the case of a sub-mortgage by subdemise of a long term (less a nominal period) itself limited out of an estate in fee simple, the foregoing provisions of this section shall operate as if the derivative term, if any, created by the sub-mortgage had been limited out of the fee simple, and so as to enlarge the principal term and extinguish the derivative term created by the sub-mortgage as aforesaid, and to enable the sub-mortgagee to convey the fee simple or acquire it by foreclosure, enlargement, or otherwise as aforesaid.

Subject to prior incumbrances.

(6) This section applies to a mortgage whether created before or after the commencement of this Act, and to a mortgage term created by this Act, but does not operate to confer a better title to the fee simple than would have been acquired if the same had been conveyed by the mortgage (being a valid mortgage) and the restrictions imposed by this Act in regard to the effect and creation of mortgages were not in force, and all prior mortgages (if any) not being merely equitable charges had been created by demise or by charge by way of legal mortgage.

Under mortgage or charge of leaseholds.

89.—(1) Where a term of years absolute has been mortgaged by the creation of another term of years absolute limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale,—

(a) the conveyance by him shall operate to convey to the purchaser not only the mortgage term, if any, but also (unless expressly excepted with the leave of the court), the leasehold reversion affected by the mortgage, subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon

(b) the mortgage term, or the charge by way of legal mortgage and any subsequent mortgage term or charge shall merge in such leasehold reversion or be extinguished unless excepted as aforesaid;

and such conveyance may, as respects the leasehold reversion, be made in the name of the estate owner in whom it is vested.

Where a licence to assign is required on a sale by a mortgagee, such licence shall not be unreasonably refused.

(2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall, unless it otherwise provides, operate (without giving rise to a forfeiture for want of a licence to assign) to vest the leasehold reversion affected by the mortgage and any subsequent mortgage term in him, subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured, and thereupon the mortgage term and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall, subject to any express provision to the contrary contained in the order, merge in such leasehold reversion or be extinguished. Under foreclosure order.

(3) Where any such mortgagee acquires a title under the Limitation Acts, he, or the persons deriving title under him, may by deed declare that the leasehold reversion affected by the mortgage and any mortgage term affected by the title so acquired shall vest in him, free from any right of redemption which is barred, and the same shall (without giving rise to a forfeiture for want of a licence to assign) vest accordingly, and thereupon the mortgage term, if any, and any other mortgage term or charge by way of legal mortgage affected by the title so acquired shall, subject to any express provision to the contrary contained in the deed, merge in such leasehold reversion or be extinguished. Where title by limitation.

(4) Where the mortgage includes fixtures or chattels personal any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge. As to fixtures, &c.

(5) In the case of a sub-mortgage by subdemise of a term (less a nominal period) itself limited out of a leasehold reversion, the foregoing provisions of this section shall operate as if the derivative term created by the sub-mortgage had been limited out of the leasehold reversion, and so as (subject as aforesaid) to merge the principal mortgage term therein as well as the derivative term created by the sub-mortgage and to enable the sub-mortgagee to convey the leasehold reversion or acquire it by foreclosure, vesting, or otherwise as aforesaid. Under sub-mortgage.

(6) This section takes effect without prejudice to any incumbrance or trust affecting the leasehold reversion which has priority over the mortgage in right of which the sale, foreclosure, or title is made or acquired, and applies to a mortgage whether executed before or after the commencement of this Act, and to a mortgage term created by this Act, but does not apply where the mortgage term does not comprise the whole of the land included in the leasehold reversion unless the rent (if any) payable in respect of that reversion has been apportioned as respects the land affected, or the rent is of no money value or no rent is reserved, and unless the lessee's covenants and conditions (if any) have been apportioned, either expressly or by implication, as respects the land affected. Where all land in lease not included.

The exception in sub-sect. (6) should be noted to the effect that in some cases, where the mortgage does not include all the land under the lease, the mortgagee cannot convey the leasehold reversion. In such cases the mortgage should contain (1) a trust

by the mortgagor of the nominal reversion; (2) power for the mortgagee to appoint new trustees; and (3) an appointment of the mortgagee as attorney for the mortgagor: see Precedent V., note (*z*).

Statutory provisions as to insurance.

A limit as to the sum for which the mortgagee under his statutory power to insure can insure the property against loss or damage by fire, and other restrictions on this power, with provisions as to the application of the money received in respect of an insurance so effected by the mortgagee, or for the maintenance of which the mortgagor is liable under the mortgage, are contained in sect. 108 of the L. P. Act, 1925, which replaces sect. 23 of the C. Act, 1881, and is as follows :—

L. P. Act, 1925, s. 108.

108.—(1) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, two third parts of the amount that would be required, in case of total destruction, to restore the property insured.

(2) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):

(i) Where there is a declaration in the mortgage deed that no insurance is required:

(ii) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed:

(iii) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor with the consent of the mortgagee to the amount to which the mortgagee is by this Act authorised to insure.

(3) All money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Act, or any enactment replaced by this Act, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Act, or any enactment replaced by this Act, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, be applied in or towards the discharge of the mortgage money.

The reference in sub-sect. (4) to "any obligation to the contrary imposed by law," is probably to sect. 83 of the Fires Prevention (Metropolis) Act, 1774, which requires the insurance money to go towards rebuilding, reinstating, or repairing the damaged buildings: see note (*k*) to Precedent VI. of LEASES.

See generally as to the insurance and repair of mortgaged property, Dav. Prec. Conv. Vol. II., 4th ed., 53, &c.

Appointment of receiver generally.

A mortgagee, when in possession, may in a proper case, and apart from any express or statutory power, appoint another person as receiver of the rents and profits at the expense of the mortgagee, but the receiver is then the agent of the mortgagee only : see *Davis* v. *Dendy* (1818), 3 Madd. 170; *Leith* v. *Irvine* (1833), 1 M. & K. 277.

Apart from this general power, the right of a mortgagee to appoint a receiver depends either upon agreement between him and the mortgagor or upon the statutory power. In either case, unless it is otherwise agreed, the receiver is the agent of the mortgagor : see also Dav. Prec. Conv. Vol. II., Pt. II., 4th ed., pp. 91 and 99, &c. Whether a receiver appointed by debenture holders is agent for them or for the company depends upon the conditions of the debenture : *Deyes* v. *Wood* [1911], 1 K. B. 806; *Cully* v. *Parsons*, [1923] 2 Ch. 512.

Statutory power to appoint receiver.

The statutory power to appoint a receiver conferred by sect. 101, sub-sect. (1) (iii) (set out above), is limited and regulated by sect. 109, which replaces sect. 24 of the C. Act, 1881, and is as follows :—

L. P. Act, 1925, s. 109.

Appointment, powers, remuneration and duties of receiver.

109.—(1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2) A receiver appointed under the powers conferred by this Act, or any enactment replaced by this Act, shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides.

(3) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same, and to exercise any powers which may have been delegated to him by the mortgagee pursuant to this Act.

(4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

(5) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum

on that gross amount, or at such other rate as the court thinks fit to allow, on application made by him for that purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely:

(i) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and

(ii) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and

(iii) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

(iv) In payment of the interest accruing due in respect of any principal money due under the mortgage; and

(v) In or towards discharge of the principal money if so directed in writing by the mortgagee;

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

Receivership Deed.

The statutory power is no doubt proper and beneficial to both parties, but where at the time of the mortgage there is a probability that the services of a receiver will be required, a receivership deed, with the ordinary provision that the receiver shall not act unless interest is in arrear, ought to be executed, inasmuch as the provisions of such an instrument better accord with the intentions of the parties. Where an action for foreclosure is pending, it may be desirable that the appointment should be made by the Court: *Tillett* v. *Nixon* (1884), 25 Ch. D. 238. After the appointment of a receiver, the mortgagor will be restrained from distraining: *Woolston* v. *Ross*, [1900] 1 Ch. 788. A receiver appointed under the Act, being agent for the mortgagor, commits a breach of duty if he pays arrears of interest which are statute-barred: *Hibernian Bank* v. *Yourell* (*No.* 2), [1919] 1 I. R. 310. The provision in sub-sect. (8) of sect. 109 (above) as to application of money received by the receiver can be varied with the consent of the mortgagee: *Yourell* v. *Hibernian Bank* (*No.* 1), [1918] A. C. 372.

Appointment by Court, &c.

As to the effect of an appointment of a receiver under the Act on the powers of leasing and surrender, see sub-sect. (19) of

sect. 99 and sub-sect. (13) of sect. 100 (set out above), and as to the effect of bankruptcy, see sect. 110. The position of a receiver as regards repairs is discussed in *White* v. *Metcalf*, [1903] 2 Ch. 567.

Power to cut timber.

The power which by sect. 101, sub-sect. (1) (iv) (above), is given to mortgagees in possession to cut ripe timber not ornamental, was introduced for the first time by the C. Act, 1881 (sect. 19, sub-sect. (1) (iv)). The rule had hitherto been that a mortgagee in possession will be restrained from cutting timber, unless the security is deficient (*Withrington* v. *Banks* (1725), Select Ca. Chy. 30; and cf. *Simmins* v. *Shirley* (1877), 6 Ch. D. 173); and that a mortgagor in possession will not be restrained from cutting timber unless the security is deficient (*Humphreys* v. *Harrison* (1820), 1 Jac. & W. 581; *Hippesley* v. *Spencer* (1820), 5 Mad. 422; *King* v. *Smith* (1843), 2 Ha. 239), and even in that case not from cutting underwood in the usual course of husbandry. See also Craig on Trees and Woods, ch. vi.; Bewes on Waste (1894), pp. 286, &c.

Restriction on consolidation of mortgages.

The restriction on the equitable doctrine of consolidation, imposed for the first time by sect. 17 of the C. Act, 1881, is substantially re-enacted by sect. 93 of the L. P. Act, 1925. The new section is as follows :—

L. P. Act, 1925, s. 93.

> **93.**—(1) A mortgagor seeking to redeem any one mortgage is entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, solely on property other than that comprised in the mortgage which he seeks to redeem.
>
> This subsection applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.
>
> (2) This section does not apply where all the mortgages were made before the first day of January, eighteen hundred and eighty-two.
>
> (3) Save as aforesaid nothing in this Act shall, in reference to mortgages, affect any right of consolidation or render inoperative a stipulation in relation to any mortgage made before or after the commencement of this Act reserving a right to consolidate.

The doctrine is founded on the equity that a person owing separate debts on separate securities to the same mortgagee ought not to be allowed to compel the mortgagee to accept payment of one debt in discharge of the mortgage securing that debt without at the same time paying off the other debts. It is difficult to say why the Legislature interposed to deprive the mortgagee of this right, except where a contrary intention was expressed. Since 1881 it has been the practice to insert a clause excluding the operation of the statute in all cases where the right to consolidate was likely to arise. Now, by virtue of sub-sect. (3), which is new, it will be sufficient merely to reserve

the right of consolidation, without expressly referring to the statutory restriction, but it may still be prudent to expressly exclude the operation of the statute. (For a form, see Precedent IV.,; and for an explanation of the doctrine, see Dav. Prec. Conv., Vol. II., Pt. II., 4th ed., pp. 288, &c.; Elphinstone, Introd. to Conv. (1922), pp. 162, 227, 279, &c.)

Further advances and tacking.

As to the previous law relating to the right of a mortgagee to make further advances to rank in priority to subsequent mortgages, and to the doctrine of tacking, see Fisher on Mortgages (1910), paras. 1133—1167; Ashburner on Mortgages (1911), pp. 357—361; Coate on Mortgages (1912), pp. 1248—1262. The law as to priority in respect of further advances made after 1925 is now regulated by sect. 94 of the L. P. Act, 1925, and subject to those provisions the right to tack is abolished. The section is as follows :—

L. P. Act, 1925, s. 94.

94.—(1) After the commencement of this Act, a prior mortgagee shall have a right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable)—

(a) if an arrangement has been made to that effect with the subsequent mortgagees; or

(b) if he had no notice of such subsequent mortgages at the time when the further advance was made by him; or

(c) whether or not he had such notice as aforesaid, where the mortgage imposes an obligation on him to make such further advances.

This subsection applies whether or not the prior mortgage was made expressly for securing further advances.

(2) In relation to the making of further advances after the commencement of this Act a mortgagee shall not be deemed to have notice of a mortgage merely by reason that it was registered as a land charge or in a local deeds registry, if it was not so registered at the date of the original advance or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened.

This subsection only applies where the prior mortgage was made expressly for securing a current account or other further advances.

(3) Save in regard to the making of further advances as aforesaid the right to tack is hereby abolished:

Provided that nothing in this Act shall affect any priority acquired before the commencement of this Act by tacking, or in respect of further advances made without notice of a subsequent incumbrance or by arrangement with the subsequent incumbrancer.

(4) This section applies to mortgages of land made before or after the commencement of this Act, but not to charges registered under the Land Registration Act, 1925, or any enactment replaced by that Act.

As to the condition in sub-sect. (1) (c), the general rule is that a contract to lend money is not specifically enforceable: see *Western Wagon, &c., Co.* v. *West*, [1892] 1 Ch. 271, and later cases. The Companies Act, 1908, sect. 105, renders a

contract with a company to take up and pay for debentures so enforceable, and this statutory exception may be within the meaning of the condition. If a covenant by the mortgagee in the mortgage to make further advances imposes an "obligation" within the condition, the law laid down in *West* v. *Williams*, [1899] 1 Ch. 132, would appear to be reversed.

Right of mortgagee to possession of documents of title.

It is a question whether now, at any rate in the case of a "puisne mortgage," (see L. C. Act, 1925, sect. 10, sub-sect. (1), Class A (i)), as all mortgages of freeholds are now by demise, the mortgage deed should not contain some express reference to the documents of title relating to the mortgaged land.

In a mortgage of freeholds under the former law, where the estate in fee simple passed to the mortgagee, the title deeds were legally incident to the estate, and the right to their possession passed with it, but the right to possession did not so pass where the mortgage was for a term only : see *Harper* v. *Faulder* (1819), 4 Mad. 129, 138. "I have never found it established in any case that a termor is entitled, on account of the length of his term, to the deeds" : *per* Alexander, C.B., in *Wiseman* v. *Westland* (1826), 1 Y. & J. 117, 122.

So far as the right of a first mortgagee is concerned, sect. 85, sub-sect. (1) of the L. P. Act, 1925, provides that "a first mortgagee shall have the same right to the possession of documents as if his security included the fee simple." Compare the corresponding provision in sect. 86, sub-sect. (1) as to a mortgage of leaseholds. Whether this provision extends to a second mortgagee who, by payment off of the first mortgage, stands in the position of the first mortgagee, is not clear. In the case of a subsequent mortgage, it may be prudent to include in the parcels a reference to the documents of title. For a form of such reference, see note (*k*) to Precedent XIX.

Indemnity clause.

In some previous editions of this work a clause was inserted indemnifying the mortgagee against involuntary losses, but is now generally omitted and is unnecessary, having regard to the provisions of sect. 106, sub-sect. (3) of the L. P. Act, 1925, set out above. In the case, however, of a sub-mortgage, an express provision to protect the sub-mortgagee against the obligation to get in the debt may be inserted : see Precedent XXVI. and Dav. Prec. Conv., Vol. II., Pt. II., 4th ed., p. 139.

Transfer of mortgages.

The principal points of law which arise in connection with the transfer of a mortgage are, it is believed, sufficiently adverted to in the notes to the various Precedents below, but the few following remarks may also be of use to the draftsman.

It is generally preferable, although not, of course, essential, that the mortgagor should be a party, if merely to testify to the

state of account between himself and the mortgagee. If not, inquiry should be made of the mortgagor as to such account before the transferee parts with his money.

The rights of a transferee under a deed executed by the mortgagee purporting to transfer his mortgage, or the benefit thereof, are now stated by sect. 114 of the L. P. Act, 1925, which is as follows :—

L. P. Act, 1925, s. 114.

114.—(1) A deed executed by a mortgagee purporting to transfer his mortgage or the benefit thereof shall, unless a contrary intention is therein expressed, and subject to any provisions therein contained, operate to transfer to the transferee—

(a) the right to demand, sue for, recover, and give receipts for, the mortgage money or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon; and

(b) the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee; and

(c) all the estate and interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such estate and interest subject to the right of redemption then subsisting.

(2) In this section "transferee" includes his personal representatives and assigns.

(3) A transfer of mortgage may be made in the form contained in the Third Schedule to this Act with such variations and additions, if any, as the circumstances may require.

(4) This section applies, whether the mortgage transferred was made before or after the commencement of this Act, but applies only to transfers made after the commencement of this Act.

(5) This section does not extend to a transfer of a bill of sale of chattels by way of security.

In addition to the ordinary Precedents in this work of Transfers of Mortgages, see for the statutory example of a transfer of mortgage, Precedent XXXVII., and for forms of "statutory" transfer of a "statutory" mortgage, Precedents XL., and XLI.

PRECEDENTS.

I.

PRECEDENT I.

LEGAL CHARGE OF FREEHOLDS.

CHARGE *of* FREEHOLDS *by way of* LEGAL MORTGAGE (*a*).

Parties.

THIS LEGAL CHARGE, made the —— day of —— BETWEEN A., of, &c. (herein called "the owner," which expression, where appropriate, includes persons entitled to redeem this security), of the one part, and B., of, &c. (herein called "the mortgagee," which expression, where appropriate, includes persons deriving

(*a*) See General Remarks above as to a charge by way of legal mortgage.

PRECEDENT I.

LEGAL CHARGE OF FREEHOLDS.

title under him), of the other part (*b*). WHEREAS the owner is entitled to the hereditaments hereinafter described for an estate in fee simple in possession free from incumbrances. AND WHEREAS the mortgagee has agreed to lend to the owner the sum of £—— upon having the repayment thereof with interest as hereinafter mentioned secured in manner hereinafter appearing. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— paid by the mortgagee (*c*) to the owner (the receipt whereof the owner doth hereby acknowledge) :—

Recital of title of owner:

—of agreement for loan.

1. The owner Doth hereby covenant with the mortgagee that the owner will pay to the mortgagee on the —— day of —— next [*six months from date of deed*] the sum of £—— [*principal*], with interest thereon from the date hereof at the rate of —— per cent. per annum, And if the whole or any part of the said sum of £—— [*principal*] shall remain unpaid after that day, will, so long as the same shall remain unpaid, pay to the mortgagee [as well after as before any judgment (*d*)] interest at the rate aforesaid on such unpaid sum by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

Covenant to pay principal and interest.

2. The owner AS BENEFICIAL OWNER Doth hereby charge by way of legal mortgage ALL [*see* PARCELS] with the payment to the mortgagee of all principal money and interest and other money hereby secured.

Charge by way of legal mortgage.

3. The owner Doth hereby covenant with the mortgagee that during the continuance of this security the owner will keep all buildings for the time being subject to such security in repair (*e*) and insured against loss or damage by fire [or aircraft] in the sum of £—— at the least [*or* in the full value thereof *or* in not less than —— per cent. of the value thereof] in some office approved by the mortgagee and will pay all premiums in respect of such insurance within seven days after [on the first day on which] the same shall become due and will on demand produce to the mortgagee the policy and premium receipts And that if default shall be made in keeping the said buildings so repaired and insured the mortgagee may enter and put into and keep in repair and insure and keep insured the same in the sum aforesaid [*or* in such sum as the mortgagee may think reasonable]

Covenant to repair and insure.

(*b*) As to this definition of the parties, see General Remarks above. Where there are two or more mortgagees substitute the plural.

(*c*) In the case of two or more mortgagees, see L. P. Act, 1925, sect. 11.

(*d*) See *Economic, &c., Socy.* v. *Usborne*, [1902] A. C. 147, and L. P. Act, 1925, s. 117 (2).

(*e*) As to the obligation imposed by the covenant to repair, see *Woodifield* v. *Bond*, [1922] 2 Ch. 40.

PRECEDENT I.

LEGAL CHARGE OF FREEHOLDS.

And that the owner will on demand repay to the mortgagee all money expended for any such purpose by him with interest thereon at the rate aforesaid from the time of the same respectively having been expended and that until such repayment the same shall be a charge by way of legal mortgage upon the premises hereinbefore charged (*f*). [*Add other provisions as required. See Precedent IV.*] IN WITNESS, &c. (*g*).

SCHEDULE—*Description of hereditaments.*

II.

PRECEDENT II.

LEGAL CHARGE OF LEASEHOLDS.

CHARGE *of* LEASEHOLDS *by way of* LEGAL MORTGAGE (*h*).

THIS LEGAL CHARGE made, &c. [*as in Precedent I.*] WHEREAS by a Lease (herein called "the lease") dated the —— day of —— and made between [*lessor*] of the one part and the owner [*or other lessee*] of the other part ALL THOSE [*parcels from lease*] were demised to the owner [*or* "to the said ——"] for the term of —— years from the —— day of —— at the yearly rent of £——, and subject to the covenants by the lessee and conditions therein contained [including a covenant not to sub-demise the premises by way of mortgage without the previous written licence of the lessor (*i*)].

Recital of lease;

—of title of owner.

[AND WHEREAS the premises are now vested in the owner for the residue of the said term of —— years (*k*)]. [And the owner has obtained the written licence of the lessor to create this charge.]

AND WHEREAS [*recite agreement for loan as in Precedent I.*]

NOW THIS DEED WITNESSETH [*&c., as in Precedent I.*]

1. [*Covenant to pay principal and interest as in Precedent I.*]

Charge by way of legal mortgage.

2. The owner AS BENEFICIAL OWNER Doth hereby charge by way of legal mortgage ALL AND SINGULAR the hereditaments comprised in and demised by the lease with the payment to the mortgagee of all principal money and interest, and other money hereby secured.

Covenant to repair and insure.

3. The owner Doth hereby covenant with the mortgagee that the owner will so long as any money shall remain due on the

---

(*f*) As to such charge not increasing stamp duty, see *Suffield* v. *Inland Revenue Commissioners*, [1908] 1 K. B. 865.

(*g*) This Precedent is based upon Form No. 1 in the Fifth Schedule to the L. P. Act, 1925. See Precedent XXXV., in which the charge is on freeholds and leaseholds.

(*h*) See General Remarks above and the notes to the preceding Precedent.

(*i*) It may be a question whether a legal charge of leaseholds, as not being actually a sub-demise, is an infringement of the covenant, if made without licence, but it would be prudent to obtain it.

(*k*) This recital is unnecessary if the owner were the original lessee.

PRECEDENT II.

LEGAL CHARGE OF LEASEHOLDS.

security of these presents keep all buildings for the time being subject to such security in repair and insured against loss or damage by fire [or aircraft] in accordance with the covenants by the lessee and conditions contained in the lease, and will on demand produce to the mortgagee the policy and premium receipts. And that if default shall be made [*continue as in Precedent I.*]. [*Add other provisions as required as in Precedent IV.*] IN WITNESS, &c. (*l*).

III.

PRECEDENT III.

EQUITABLE MORTGAGE BY DEPOSIT OF DOCUMENTS.

MEMORANDUM *accompanying a* DEPOSIT *of* DEEDS *by way of equitable mortgage* (*m*).

BE IT REMEMBERED that on this —— day of ——, 19—, the documents of title specified in the Schedule hereto which relate to certain lands containing —— or thereabouts, situate at —— in the County of ——, and to which A., of, &c., is entitled in fee simple in possession free from incumbrances [*or as the case may be*] have been deposited by him with B., of, &c., by way of equitable mortgage for securing the repayment to the said B. of the sum of £—— this day advanced by him to the said A., with interest thereon from this day at the rate of —— per cent. per annum payable half-yearly. IN WITNESS, &c. (*n*).

SCHEDULE—*Documents of title.*

(*l*) As to where part only of the leasehold land is charged, see Precedent V.

(*m*) A memorandum substantially in this form was held in *Meek* v. *Baylis* (1862), 31 L. J. Ch. 448, not to require an *ad valorem* stamp as "an agreement accompanied with a deposit of title deeds," under the Stamp Act, 1850. But clearly such a memorandum constitutes an "equitable mortgage" within sect. 86, sub-sect. (2) of the Stamp Act, 1891.

As to the protection afforded by a deposit of documents, see sects. 2 (3) (i) and 97 of the L. P. Act, 1925; sect. 10 (1) Class C. (i) of the L. C. Act, 1925, and sect. 21 (2) (i) of the S. L. Act, 1925.

(*n*) In the previous edition (MORTGAGES, Precedents I. and II., pp. 274—277) forms were given of agreements to execute a legal mortgage of freeholds and leaseholds, but in future, it is thought, such agreements will rarely be made, and a person lending money will either require a charge by way of legal mortgage or a memorandum of deposit (as above), unless he requires a full legal mortgage by demise or sub-demise.

As to what equitable charges may be registered as land charges, see L. C. Act, 1925, sect. 10; and as to the realisation by the Court of equitable mortgages of lands, see L. P. Act, 1925, sect. 90. As to the protection given to a person having the possession of documents of title to land, see L. P. Act, 1925, sects. 2 and 13; and in the case of settled land, S. L. Act, 1925, sect. 21.

IV.

PRECEDENT IV.

FREEHOLDS TO ONE MORTGAGEE.

MORTGAGE *of* FREEHOLDS *to* ONE MORTGAGEE.

THIS MORTGAGE, made, &c., BETWEEN A., of &c. (herein called "the owner" which expression [*&c., as in Precedent I.*]) of the one part, and C., of &c. (herein called "the mortgagee" which expression [*&c., as in Precedent I.*]) of the other part. [*Recite title of owner and agreement for loan, as in Precedent I.*] NOW THIS DEED WITNESSETH that in consideration of the sum of £——, paid by the mortgagee to the owner (the receipt whereof the owner doth hereby acknowledge).

1. [*Covenant to pay principal and interest as in Precedent I.*]

Demise to mortgagee.

2. The owner AS BENEFICIAL OWNER Doth hereby demise unto the mortgagee ALL [*see* PARCELS]. TO HOLD unto the mortgagee for a term of 3,000 years from the date hereof without impeachment of waste (*o*), subject to the proviso for redemption hereinafter contained.

Proviso for redemption.

3. PROVIDED that if the owner shall pay to the mortgagee, on the —— day of —— next (*p*), the sum of £—— [*principal*] with interest thereon from the date hereof at the rate aforesaid, the mortgagee will at any time thereafter, at the request and cost of the owner, either execute a receipt for the mortgage money in the manner prescribed by the Law of Property Act, 1925, or surrender to the owner the term hereby created or as the owner shall direct.

[4. *Covenant to repair and insure as in Precedent I.*]

Covenant against registration.

[5. The owner Doth hereby covenant with the mortgagee that during the continuance of this security no person shall be registered under the Land Registration Act, 1925, as proprietor of the premises or any part thereof without the consent in writing of the mortgagee (*q*).]

Modification of statutory powers of leasing, &c.

6. The owner shall not, without the consent in writing of the mortgagee, exercise any of the powers of leasing or of accepting surrenders conferred on mortgagors by the Law of Property Act, 1925, but no lessee shall be concerned as to such consent (*r*).

As to right to consolidate.

[7. The right to consolidate is reserved and the statutory restriction contained in sect. 93 of the Law of Property Act, 1925, shall not apply to this security (*s*).]

(*o*) As to the meaning of this expression, see Bewes on Waste (1894), pp. 145, &c.

(*p*) The same date as in the covenant to pay principal and interest.

(*q*) This covenant is desirable in a mortgage of unregistered land, whether in a compulsory district or not.

(*r*) It is common, but by no means of course, to preclude the owner from exercising these powers. See General Remarks, above, pp. 327, &c.

(*s*) This clause is to be used with discrimination. See General Remarks, above, p. 341

PRECEDENT IV.

FREEHOLDS TO ONE MORTGAGEE.

[8. The owner Doth hereby attorn tenant to the mortgagee of the said hereditaments [of such part of the said hereditaments as are now in the occupation of the owner] at the yearly rent of ten shillings [*or other nominal rent*]. PROVIDED that the mortgagee may at any time after the said —— day of —— next [*date of redemption*] and without notice to quit enter upon such hereditaments and determine the tenancy hereby created. PROVIDED ALSO that neither the tenancy hereby created nor receipt of the rent payable thereunder shall render the mortgagee liable as mortgagee in possession to account for the rents and profits of such hereditaments so long as the owner remains in occupation thereof (*t*).] IN WITNESS, &c.

Attornment Clause.

SCHEDULE—*Description of hereditaments.*

V.

MORTGAGE *of* LEASEHOLDS (*u*).

PRECEDENT V.

OF LEASEHOLDS.

THIS MORTGAGE, made, &c., BETWEEN A., of &c. (herein called "the owner," which expression [*&c., as in Precedent I.*]), of the one part, and B., of, &c. (herein called "the mortgagee," which expression [*&c., as in Precedent I.*]), of the other part. WHEREAS, &c. [*recite lease and its having become vested in the owner, as in Precedent II., and agreement for loan as in Precedent I*]. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid to the owner by the mortgagee (the receipt whereof the owner doth hereby acknowledge).

1. [*Covenant to pay, &c., as in Precedent I.*]

2. The owner, AS BENEFICIAL OWNER (*x*), Doth hereby demise unto the mortgagee, ALL the hereditaments demised by the lease, TO HOLD unto the mortgagee, for the residue of the said term

Demise.

(*t*) If the mortgagor is in occupation, this clause may be of use in enabling the mortgagee to recover immediate possession. See General Remarks, p. 326.

(*u*) A mortgage of leaseholds must now be made by sub-demise, or by a charge by way of legal mortgage, see L. P. Act, 1925, sect. 86, set out under General Remarks above.

In reliance on sect. 89 (also set out above) the clauses formerly inserted (a) creating the owner a trustee of the leasehold reversion; (b) giving the mortgagee power to appoint new trustees, and (c) appointing the mortgagee attorney to assign the head-term, may now be omitted (but see note (*z*)).

(*x*) As to the covenants implied by virtue of these words, see L. P. Act, 1925, sect. 76 (1) (C) and (D), set out in CONVEYANCES under General Remarks.

PRECEDENT V.

OF LEASEHOLDS.

of —— years, except the last ten days thereof (*y*), subject to the proviso hereinafter contained :

Proviso for redemption.

3. PROVIDED, that if the owner shall pay to the mortgagee, on the —— day of —— next, the sum of £—— [*principal*], with interest thereon from the date hereof at the rate aforesaid, the mortgagee will at any time thereafter [*&c., as in the preceding Precedent.*]

4. [*Covenant to repair and insure as in Precedent II.*]

[*Add other clauses as required, see Precedent IV.* (*z*).] IN WITNESS, &C.

(*y*) The whole term and not merely the ten days, remains in the mortgagor : *Re Moore and Hulm*, [1912] 2 Ch. 105 (where two mortgages were made for the residue of the term, except the last day).

(*z*) If only part of the land comprised in the lease is included in the mortgage and there has been no apportionment, then, having regard to sub-sect. (6) of sect. 89 of the L. P. Act, 1925, the following clauses should be added after the proviso for redemption (or, in the case of a charge by way of legal mortgage of leaseholds, after the charge) :—

Trust of nominal reversion.

"The owner shall stand possessed of the nominal reversion hereby reserved by excepting the last —— days of the term granted by the lease in the hereditaments herein comprised [*the parcels having been described as being* "part of the hereditaments demised by the lease"] In trust for the mortgagee, and to be disposed of as the mortgagee shall direct, but subject to such right of redemption as may for the time being be subsisting in the premises by virtue of the proviso for redemption hereinbefore contained.

Power to remove trustee.

"The mortgagee may remove the owner or other trustee for the time being from being a trustee, and may appoint himself or any other person to be a trustee as if the removed trustee were dead, and carry such appointment into effect by vesting declaration or otherwise.

Appointment of attorney.

"The owner doth hereby irrevocably appoint the mortgagee to be the attorney of the owner in his name and on his behalf, and as his act and deed to sign, seal, deliver or otherwise perfect any deed of assignment of the said term of —— years [*lease term*] in order to vest the same in the mortgagee or in any person in trust for him, subject as aforesaid, or in any purchaser thereof for the whole residue of the same term."

VI.

Mortgage *of* Leaseholds, *the* Lease *not being recited.* Provisions *for* Reduction *of* Rate *of* Interest *on punctual payment and for* Continuance *of* Loan.

Precedent VI. — Of Leaseholds.

THIS MORTGAGE, made, &c., BETWEEN A., of, &c. (herein called "the owner," which expression [*&c., as in Precedent I.*]), of the one part, and B., of, &c. (herein called "the mortgagee," which expression [*&c., as in Precedent I.*]), of the other part, WITNESSETH, that, in consideration of the sum of £——, paid by the mortgagee to the owner (the receipt whereof the owner doth hereby acknowledge).

1. [*Covenant to pay, &c., as in Precedent I.*]

Parcels by reference to lease.

2. The owner AS BENEFICIAL OWNER Doth hereby demise unto the mortgagee, ALL THAT, &c. [*parcels as in lease*], all which hereditaments were by a Lease (herein called "the lease") dated the —— day of ——, and made between [*parties*] demised to the owner for the term of —— years from the —— day of ——, at the yearly rent of £——, and subject to covenants by the lessee and to the conditions therein contained, TO HOLD unto the mortgagee for the residue of the said term of —— years, except the last ten days thereof, subject to the proviso for redemption hereinafter contained.

3. PROVIDED, &c. [*proviso for redemption, as in Precedent IV.*].

4. [*Covenant to repair and insure, as in Precedent II.*]

Proviso for reduction of interest.

5. PROVIDED, that if the owner shall on, or within thirty days after every half-yearly day for payment of interest, so long as the said sum of £—— [*principal*], or any part thereof, shall remain unpaid, punctually pay to the mortgagee interest for the principal sum so remaining unpaid at the rate of —— per cent. per annum [*reduced rate*], AND ALSO shall perform and observe all the covenants on the part of the owner herein contained or by law implied (except the covenants for payment of the principal sum and of interest at the higher rate) the mortgagee shall accept interest for the same principal sum, at the rate of —— per cent. per annum [*reduced rate*] for every half-year for which such interest shall continue to be so punctually paid to him within the time aforesaid.

Proviso for continuance of loan.

[6. PROVIDED ALSO, that, if the owner shall on, or within thirty days after every half-yearly day for payment of interest, until the —— day of ——, 19—, punctually pay to the mortgagee, interest for the said sum of £—— [*principal*], at the rate of —— per cent.

PRECEDENT VI.

OF LEASEHOLDS.

per annum (*a*), down to the same half-yearly days of payment respectively, and shall perform and observe all the covenants on the part of the owner herein contained or by law implied, then the mortgagee shall not before the said —— day of ——, 19—, call in the same sum, or any part thereof. PROVIDED ALSO, that the owner shall not before the said —— day of ——, 19—, compel the mortgagee to receive the said sum of £——, or any part thereof.]

Provision for reduction of interest (or continuance of loan) not to operate in certain cases.

7. PROVIDED that if the mortgagee shall enter into possession or receipt of the rents and profits of the mortgaged premises, as mortgagee in possession or while any accrued interest remains unpaid or after judgment has been obtained by the mortgagee for payment of the money due under this security, the provision hereinbefore contained for accepting a lower rate of interest [continuance of the loan] shall cease to have any operation.

Power of sale when exercisable.

8. PROVIDED that for the purposes of the power of sale and other powers in these presents implied by law the said sum of £—— shall be deemed to become due on the said —— day of —— next [*the day on which it is covenanted to be paid*]. [*Add other clauses as desired, as in Precedent IV.*] IN WITNESS, &c.

VII.

PRECEDENT VII.

CONSOLIDATING MORTGAGE FOR AGGREGATE SUM.

CONSOLIDATING MORTGAGE *of* FREEHOLDS *for an* AGGREGATE SUM *consisting of previous* MORTGAGE DEBTS *transferred to Mortgagees and* FURTHER ADVANCE *where Land subject to* PRIOR ANNUAL *and other* CHARGES (*b*).

THIS MORTGAGE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (herein called "the owner," which expression, where appropriate, includes persons entitled to redeem) of the one part, and B., of, &c., C., of, &c., and D., of, &c. [*mortgagees*] (herein called "the mortgagees," which expression, where appropriate, includes persons deriving title under them), of the other part : WHEREAS the owner is entitled to the hereditaments described in the First Schedule hereto for an estate of inheritance in fee simple in possession, subject only to the several principal sums secured by way of mortgage and further charge mentioned

Recitals :
—of title of mortgagor subject to incumbrances :

(*a*) If the mortgage contains, as in the text, a proviso for reduction of interest, this rate should be the reduced rate. As to clauses for continuance of loan and reduction of interest, see General Remarks, above.

(*b*) The framing of this deed will depend upon the mode in which the previous mortgages were created, but in this Precedent it is assumed that they were all created by mortgage by demise after 1925.

in the Second Schedule hereto, and to the interest thereon, and to the terms of years created for securing the same respectively, and to the several annual sums and incumbrances mentioned in the Third Schedule hereto; AND WHEREAS the said several principal sums mentioned in the Second Schedule have by the several transfers therein mentioned become vested in and are owing to the mortgagees on a joint account, but all interest for the same has been paid down to the date of these presents, and the said hereditaments are vested in the mortgagees, as such mortgagees as aforesaid for the several terms of years created by the mortgages mentioned in the Second Schedule, subject to the said several annual sums and incumbrances mentioned in the Third Schedule; AND WHEREAS the mortgagees have agreed out of money belonging to them on a joint account to lend to the owner the further sum of £——, upon having the repayment of the same and of the said several principal sums mentioned in the Second Schedule, and making altogether the aggregate sum of £——, with interest for the same after the rate hereinafter mentioned, secured in manner hereinafter appearing: NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said several sums mentioned in the Second Schedule being owing to the mortgagees as aforesaid, and of the sum of £—— now paid by the mortgagees to the owner (the receipt whereof the owner doth hereby acknowledge).

PRECEDENT VII.

CONSOLIDATING MORTGAGE FOR AGGREGATE SUM.

—of prior mortgages being vested in mortgagees;

—of agreement for further advance.

1. The owner Doth hereby covenant with the mortgagees [and with each of them (*c*)] that the owner will pay to the mortgagees on the —— day of —— next the said sum of £—— [*aggregate sum*] with interest [*continue covenant to pay interest as in Precedent I.*].

2. The owner AS BENEFICIAL OWNER Doth hereby demise unto the mortgagees, ALL AND SINGULAR the manors or lordships, rectory, markets, market-houses, tolls, dues, payments, ferry, messuages, lands, tenements, rights, royalties, franchises, liberties, privileges, and hereditaments, the particulars whereof are specified in the First Schedule, And all and singular other the lands, tenements, and hereditaments (if any) of him the owner, situate, arising (*d*), or being in any of the parishes or places mentioned in the same schedule, or any parish or place near or adjacent thereto, TO HOLD unto the mortgagees for the term of 3,000 years from the date hereof, without impeachment of waste DISCHARGED from all the several principal sums men-

Demise by mortgagor.

Parcels of large estate.

Discharged from previous mortgages but subject to prior charges.

(*c*) The words in brackets may now be omitted, see L. P. Act, 1925, sect. 81.

(*d*) As to the importance of this word when incorporeal hereditaments are meant to be included, see *Crompton* v. *Jarratt* (1885) 30 Ch. D. 298; *Re Hodgson*, [1898] 2 Ch. 545.

PRECEDENT VII.

CONSOLIDATING MORTGAGE FOR AGGREGATE SUM.

tioned in the Second Schedule hereto, and the interest henceforth to grow due for the same, and the securities for the same respectively, To the intent that the several prior terms shall cease. BUT SUBJECT to the prior annual sums and incumbrances mentioned in the Third Schedule, and the remedies and securities for the same respectively, and subject to the proviso for redemption hereinafter contained.

Proviso for redemption.

3. PROVIDED that, if the owner shall pay to the mortgagees, on the —— day of —— next, the sum of £—— (being the aggregate of the said sums mentioned in the Second Schedule, and of the said sum of £—— so advanced as aforesaid), with interest thereon from the date hereof at the rate of —— per cent. per annum, then the mortgagees will at any time thereafter at the request and cost of the owner either execute a receipt for the mortgage money in the manner prescribed by the Law of Property Act, 1925, or surrender to the owner the term hereby created or as the owner shall direct, but without prejudice to such of the said annual sums and incumbrances mentioned in the Third Schedule as shall for the time being be subsisting or capable of taking effect, and the remedies and securities for the same respectively.

If sale made by mortgagees discharged from subsisting prior charges, power to give indemnity against them (*e*).

4. ANY sale under the power of sale herein by law implied may, if made discharged from all or any of the said annual sums and incumbrances mentioned in the Third Schedule or any part or parts thereof respectively, be so made either upon the terms of all or any or any part of them being redeemed or discharged out of the purchase-money of the hereditaments sold, or of any Government or other annuity or annuities being purchased out of such purchase-money by way of substitution for, or indemnity against, the said annual sums or any or any part of them, or upon any other terms of indemnity against the said annual sums and incumbrances, and generally upon such terms and with power to execute and do all such assurances and things as the mortgagees shall think reasonable for carrying the above purposes into effect. [*Other clauses as required, see Precedent IV.*] IN WITNESS, &c.

FIRST SCHEDULE—*Description of hereditaments.*

SECOND SCHEDULE—*Principal sums and securities.*

THIRD SCHEDULE—*Annual sums and incumbrances.*

(*e*) This clause would seldom be required if the incumbrances consisted of gross sums only. See L. P. Act, 1925, sect. 105, set out under General Remarks, above, p. 334.

VIII.

MORTGAGE *of* FREEHOLDS *with* PROVISIONS *for* PAYMENT *by* INSTALMENTS, *to* ANTICIPATE PAYMENTS *and to* REDEEM PART *of* MORTGAGED LAND. *No recitals.*

PRECEDENT VIII.

OF FREEHOLDS.

THIS MORTGAGE (*f*), made, &c., BETWEEN A., of, &c. (herein called "the owner," which expression [*&c., as in Precedent I.*]), of the one part, and B., of, &c. (herein called "the mortgagee," which expression [*&c., as in Precedent I.*]), of the other part, WITNESSETH, that, in consideration of the sum of £—— paid to the owner by the mortgagee (the receipt whereof the owner doth hereby acknowledge) :—

1. [*Covenant to pay, &c., as in Precedent I.*]

2. The owner, AS BENEFICIAL OWNER, Doth hereby demise [*&c., as in Precedent IV.*].

3. [*Proviso for redemption as in Precedent IV.*]

Proviso for payment by instalments.

4. PROVIDED that, if the owner shall pay to the mortgagee the said sum of £——, with interest thereon at the rate aforesaid from the date hereof, by the instalments at the times and in manner hereinafter mentioned (that is to say), the said principal sum by equal half-yearly instalments of £—— each on every —— day of —— and —— day of ——, the first instalment to be paid on the —— day of —— next (*g*), and the interest on the principal money for the time being unpaid by half-yearly payments on the same half-yearly days, or (as to each such payment of principal and interest) shall make the same within thirty days after the day so appointed for payment thereof, and if the owner shall also observe and perform the covenants herein contained or by law implied (other than the covenants for payment of the principal money and interest hereby secured), then the mortgagee shall accept payment of the said sum of £——, and interest by the instalments at the times and in manner aforesaid.

Power to owner to anticipate payments (*h*).

5. PROVIDED that the owner may at any time or times, upon giving to the mortgagee at least one calendar month's notice in writing of his intention so to do, pay off all or any part of the principal money for the time being owing on the security of these presents, so that not less than £—— be so paid at any one time,

---

(*f*) Or if a charge by way of legal mortgage, say "THIS LEGAL CHARGE" and for clauses 2 and 3 of this Precedent substitute clause 2 of Precedent I.

(*g*) The days fixed for payment of instalments should correspond with the days fixed by the original covenant for payment of interest.

(*h*) This is not a necessary part of the agreement for payment by instalments, but may be inserted if such is the arrangement.

PRECEDENT VIII. — OF FREEHOLDS.

and that upon any such payment of principal the interest on the principal sum paid off down to the time of such payment be fully paid, and that any such partial payment by anticipation shall not interfere with the payment in regular course of the instalments of principal subsequently payable pursuant to the provision hereinbefore contained, but shall only have the effect of accelerating the ultimate payment of the money remaining due on the security of these presents.

Power of sale.

6. PROVIDED that, for the purposes of the power of sale and other powers in these presents by law implied, the said sum of £—— [*principal*] shall be deemed to become due on the said —— day of —— next [*day on which it is covenanted to be paid*].

Power to redeem part of mortgaged land.

7. PROVIDED that the owner may, on giving three calendar months' written notice to the mortgagee of his desire so to do, and on payment of the expenses of the mortgagee's solicitors and surveyors in reference to such notice and in carrying out the same, from time to time or at any time redeem any part or parts or all of the premises comprised in this security, but only if the surveyor to the mortgagee, in case of any partial redemption, shall report that the amount proposed to be repaid to the mortgagee is sufficient, regard being had as well to the property proposed to be redeemed as to the property left on mortgage, and also provided that the mortgagee shall be secured in respect of the premises proposed to be redeemed against any use of the same by the owner which would be detrimental to the mortgagee, in respect of the remainder of the property included in this security.

[*Other clauses as desired, as in Precedent IV.*] IN WITNESS, &c.

SCHEDULE—*Description of hereditaments.*

IX.

MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS.

PRECEDENT IX. — OF FREEHOLDS AND LEASEHOLDS.

THIS MORTGAGE (*i*), made, &c., BETWEEN A., of, &c. (herein called "the owner," which expression [*&c., as in Precedent I.*]), of the one part, and B., of, &c. (herein called "the mortgagee," which expression [*&c., as in Precedent I.*]), of the other part. WHEREAS, &c. [*recite title of owner as in Precedents I. & II., and agreement for loan as in Precedent I.*]. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid by the mortgagee

(*i*) For a form of charge by way of legal mortgage of freeholds and leaseholds, see the statutory example set out as Precedent XXXV., below.

to the owner (the receipt whereof the owner doth hereby acknowledge) :— PRECEDENT IX.

OF FREEHOLDS AND LEASEHOLDS.

1. [*Covenant to pay, &c., as in Precedent I.*]

2. The owner, AS BENEFICIAL OWNER, Doth hereby demise unto the mortgagee [*freeholds: see* PARCELS, *referring to First Schedule*] TO HOLD unto the mortgagee for a term of 3,000 years from the date hereof without impeachment of waste, subject to the proviso for redemption hereinafter contained. Demise of freeholds.

3. The owner, AS BENEFICIAL OWNER, Doth hereby demise unto the mortgagee ALL THOSE —— hereditaments comprised in and demised by the lease [*referring to Second Schedule*], TO HOLD unto the mortgagee for the residue of the said term of —— years, except the last ten days thereof, subject to the proviso for redemption hereinafter contained. Sub-demise of leaseholds. Habendum.

4. PROVIDED that, if the owner shall pay to the mortgagee on the —— day of —— next the said sum of £—— [*principal*], with interest thereon from the date hereof at the rate aforesaid, the mortgagee will at any time thereafter, at the request and cost of the owner, either execute a receipt for the mortgage money in the manner prescribed by the Law of Property Act, 1925, or surrender to the owner the term and sub-term hereby respectively created or otherwise as the owner shall direct. Proviso for cesser on redemption.

5. The owner doth hereby covenant with the mortgagee that during the continuance of this security the owner will keep all buildings for the time being subject to such security in repair and insured against loss or damage by fire [or aircraft] as to the freeholds in the sum of £—— at the least [*or* in the full value thereof, *or* in not less than —— per cent. of the value thereof] in some office appointed by the mortgagee, and will pay all premiums in respect of such insurance within seven days after [on the first day on which] the same shall become due; and as to the leaseholds, in accordance with the covenants by the lessee and conditions contained in the lease, and as to all the said hereditaments, will on demand produce to the mortgagee the policies and premium receipts.

[*Other clauses as desired, as in Precedent IV.*] IN WITNESS, &c.

FIRST SCHEDULE—*Freeholds.*

SECOND SCHEDULE—*Leaseholds.*

X.

PRECEDENT X.

OF LAND SUBJECT TO A RENT-CHARGE.

MORTGAGE *by* JOINT TENANTS *of* ENFRANCHISED COPYHOLDS *subject to a* RENTCHARGE.

THIS MORTGAGE (*j*), made, &c., BETWEEN A., of, &c., B., of, &c., and C., of, &c. (herein collectively called "the owners," which expression, where appropriate, includes the survivors and survivor and other persons entitled to redeem this security), of the one part, and D., of, &c. (herein called "the mortgagee," which expression, where appropriate, includes persons deriving title under him), of the other part. WHEREAS

Recital of title;

the owners are seised as joint tenants in fee simple in possession of the hereditaments hereinafter described, which were formerly copyhold but are now enfranchised, subject to a perpetual yearly rentcharge of £——, but otherwise free from incumbrances, and are so seised on trust for sale and are also entitled as joint tenants in equity to the proceeds of sale and the rents until sale, free from incumbrances (*k*). AND WHEREAS the mortgagee has agreed to lend to the owners [*&c. as in Precedent I.*]. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— paid by the mortgagee to the owners (the receipt whereof the owners hereby acknowledge) :—

—agreement for loan.

Covenant to pay principal and interest.

1. The owners Do hereby jointly and severally covenant with the mortgagee that the owners or one of them will [*continue covenant to pay principal and interest as in Precedent I.*].

Demise to mortgagee.

2. The owners, AS BENEFICIAL OWNERS, Do hereby demise unto the mortgagee ALL [*see* PARCELS] TO HOLD unto the mortgagee for a term of 3,000 years from the date hereof without impeachment of waste, subject to the proviso for redemption hereinafter contained.

Proviso for redemption.

3. PROVIDED that, if the owners or one of them shall pay to the mortgagee on the —— day of —— next the sum of £—— [*principal*], with interest thereon from the date hereof at the rate aforesaid, the mortgagee will at any time thereafter, at the request and cost of the owners, either execute a receipt for the mortgage money in the manner prescribed by the Law of Property Act, 1925, or surrender to the owners the term hereby created or as the owners shall direct.

Covenant by owners to pay rent charge and indemnify and on default mortgagee may pay.

4. The owners Do hereby jointly and severally covenant with the mortgagee that the owners, or one of them, will, so long as any money remains due on this security, pay the said yearly

(*j*) See p. 355, note (*f*).

(*k*) See L. P. Act, 1925, sect. 36, set out under PARTITIONS, General Remarks

rentcharge of £——, and keep the mortgagee indemnified against all actions, proceedings, costs, damages, expenses, claims, and demands in respect of the non-payment of the said rentcharge, AND that if default shall be made by the owners in payment of the said rentcharge, the mortgagee may pay the said rentcharge, and all money paid by the mortgagee under this covenant shall be added to the money payable under this security and be charged upon the said hereditaments. [*Joint and several covenant by owners to repair and insure buildings (if any), and other clauses as desired: see Precedent IV.*] IN WITNESS, &c. (*l*).

PRECEDENT X. OF LAND SUBJECT TO A RENT-CHARGE.

XI.

MORTGAGE *by* PARTNERS *to a* BANK, *for securing an* ACCOUNT CURRENT (*m*).

PRECEDENT XI. BY PARTNERS TO A BANK.

THIS MORTGAGE, made, &c., BETWEEN A., B., and C., of, &c., carrying on business in partnership as —— under the firm-name of A. & Co. (herein called "the partners," which expression, where appropriate, includes any person now or hereafter during the continuance of this security carrying on the business in the same or some other firm-name and persons entitled to redeem this security), of the one part, and —— Bank, Limited, whose registered office is at —— (herein called "the Bank," which expression, where appropriate, includes any corporation or person for the time being carrying on the business of the Bank, and

Parties.

Recital of seisin of partners.

(*l*) This form may be adapted to a mortgage of ordinary freeholds subject to a rentcharge. If the deed creating the rentcharge contains covenants besides that to pay the rentcharge the mortgagors should also covenant to perform such covenants. The covenants implied by sect. 77 of the L. P. Act, 1925, do not apply to mortgages. As the mortgagee takes only a term he is under no liability to pay the rentcharge (see *Re Herbage Rents*, [1896] 2 Ch. 811, and compare *Cundiff* v. *Fitzsimmons*, [1911] 1 K. B. 513, where he was held to be liable as mortgagee in fee simple). His security, however, might be seriously prejudiced if the owner of the rentcharge were to enforce against the land the remedies conferred on him by sect. 121 of the L. P. Act, 1925 (which replaces sect. 44 of the C. Act, 1881). Rentcharges created under the provisions of the Copyhold Act, 1894, were recoverable by the like remedies as were provided by sect. 44 of the C. Act, 1881 (Copyhold Act, 1894, sect. 27 (e)), and a compensation rentcharge created under the L. P. Act, 1922, has the like incidents (L. P. Act, 1922, sect. 138 (6)).

Rentcharge how affecting mortgagee.

Enfranchisement or compensation rentcharges.

(*m*) If preferred this deed may be in the form of a charge by way of legal mortgage, in which case instead of "THIS MORTGAGE" say "THIS LEGAL CHARGE," and substitute (with variations of "the partners" for "the owner" "the Bank" for "the mortgagee") clause 2 of Precedent I. for clauses 2 and 3 of this Precedent. The recital of the title of the partners will depend upon the form of the conveyance to them, but if, as here, the partnership is disclosed they should, it is thought, even though holding as trustees, give "as beneficial owners" the full covenants for title.

PRECEDENT XI.

BY PARTNERS TO A BANK.

persons deriving title under the Bank), of the other part: WHEREAS the partners are seised of the hereditaments hereinafter described as joint tenants at law in fee simple in possession free from incumbrances on trust for sale [with power to mortgage as if they were absolute owners (*mm*)] and money is required to be raised under the trust; AND WHEREAS the partners have opened [*or* keep] an account current with the Bank, for and in the name of the said firm of A. & Co.; AND it has been agreed that if the Bank make advances on loans or grant other accommodation to the partners the payment of all such sums as shall by means thereof become owing by the partners to the Bank, shall be secured in manner hereinafter appearing: NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises.

Of partners having an account with the Bank;

—of the agreement for the security.

Covenant for payment of balance on account current.

1. THE partners Do, and, as separate covenants, every two of them Do and each of them Doth, hereby covenant with the Bank, that the partners will, on demand made to them or any of them, or left upon any part of the hereditaments hereinafter granted, pay to the Bank the balance which, on the account current of the said firm of A. & Co., with the Bank, shall for the time being be owing for bills, notes and drafts accepted, paid, or discounted, and for other loans, credits, or advances made to or for the accommodation or at the request of the partners, and for interest, commission, and other lawful charges, together with interest on such balance, from the day of such demand having been made or left till the actual payment thereof, at the rate of —— per cent. per annum.

Demise.

Parcels, comprising mill, lands, &c.

2. THE partners AS BENEFICIAL OWNERS Do, and each of them severally AS BENEFICIAL OWNER Doth, hereby demise unto the Bank ALL AND SINGULAR the mill, engine-house, lands, messuages or cottages and buildings situate in the Parish of ——, in the County of ——, the particulars whereof are specified in the Schedule hereto, and which are delineated on the plan hereto and thereon coloured —— (*n*): TO HOLD unto the Bank for a term of 3,000 years from the date of these presents without impeachment of waste subject to the proviso for redemption hereinafter contained:

Proviso for redemption.

3. PROVIDED, that, if the partners or one of them shall, on demand made or left as aforesaid, or without such demand having been made or left, pay to the Bank, or to one of the cashiers for the time being of the Bank (whose receipt shall be a sufficient

(*mm*) See CONVEYANCES, Precedent XXV., and L. P. Act, 1925, sect. 3 (i) (*b*) (ii).

(*n*) If desired, add "together with all fixtures." As to what articles pass as fixtures in a mortgage of land, see *Vaudeville, &c., Cinema* v. *Muriset*, [1923] 2 Ch. 74.

discharge), the aforesaid balance, together with (in the case of such demand having been made or left) interest on such balance from the day of such demand having been made or left till the actual payment thereof, at the rate of —— per cent. per annum, then at any time thereafter the Bank will, at the request and cost of the partners, either execute a receipt for the mortgage money in the manner prescribed by the Law of Property Act, 1925, or surrender to the partners the term hereby created or as the partners shall direct.

Joint and several covenants by mortgagors.

4. THE partners Do, and as separate covenants every two of them Do, and each of them Doth hereby covenant with the Bank, that the partners will, during the continuance of the present security, keep the premises in a good state of repair and in perfect working order, and also insured against loss or damage by fire [or aircraft] in the sum of £—— at the least, in such office or offices as the Bank, or the manager for the time being of the Bank shall approve, and will punctually pay all premiums and sums of money necessary for such purpose; and will, at any time on demand made or left as aforesaid, produce to the Bank, or the manager or other officer for the time being of the Bank, or leave at the banking house for the time being in ——, the policy or policies of such insurance, and the receipt for every such payment; AND ALSO, that, if default shall be made in keeping the said premises in such repair and working order or insured as aforesaid, the Bank may enter and put into and keep in repair and working order the premises, or (as the case may require) insure, and keep insured, the same in any sum not exceeding the sum of £——, and may carry any money expended for that purpose to the credit of the Bank, on the said account current of the said firm of A. & Co.

To keep premises in repair, and insured against fire;

—on default mortgagees may insure and repair.

As to power of sale.

5. The power of sale in these presents by law implied shall be exerciseable at any time after the execution of these presents, without any further consent on the part of the partners or of any other person. AND, upon any such sale as aforesaid, the receipt of any of the cashiers for the time being of the Bank for the purchase-money of the premises sold, shall effectually discharge the purchaser therefrom, and from being concerned to see to the application, or being answerable for any loss or misapplication thereof.

Receipt of cashier to be a discharge for the purchase-money.

6. [*Covenant against registration, as in Precedent IV.*]

Mortgagees not to be answerable for involuntary losses.

7. The Bank shall not be answerable or accountable for any involuntary losses which may happen in or about the execution of any of the powers and trusts herein contained or otherwise vested in them as mortgagees under these presents.

8. These presents are intended to be a security for the balance

PRECEDENT XI.

BY PARTNERS TO A BANK.

Declaration as to nature of security.

for the time being owing on the account current of the said firm of A. & Co. to the Bank, whether the said firm shall consist of the present members thereof respectively or of any of them, alone or together with any other person or only of some other person or persons and notwithstanding any change in the condition of the said firm or in the firm-name under which the business is carried on (*o*).

IN WITNESS, &c.

SCHEDULE—*Particulars of hereditaments.*

XII.

PRECEDENT XII.

OF A POLICY OF ASSURANCE.

MORTGAGE *of a* POLICY *of* ASSURANCE *for securing a* SUM ALREADY DUE *and* FURTHER ADVANCES (*p*).

THIS MORTGAGE, made, &c., BETWEEN A., of, &c. (herein called "the owner," which expression [*&c., as in Precedent I.*]), of the one part, and B., of, &c. (herein called "the mortgagee," which expression [*&c., as in Precedent I.*]), of the other part, WITNESSETH that in consideration of the sum of £—— owing by the owner to the mortgagee :—

Covenant to pay principal due and further advance, &c.

1. The owner Doth hereby covenant with the mortgagee, that the owner will pay unto the mortgagee the said sum of £—— [*sum already owing*], together with interest thereon in the meantime, at the rate of —— per cent. per annum, on the —— day of —— next, and will also, on such one of the half-yearly days hereinafter mentioned for payment of interest as shall occur next after the time of the same respectively being advanced or becoming due, pay to him such other money (if any) as may be advanced by him to or on account of, or may become due to him from the owner with interest thereon, at the rate

---

(*o*) The stamp must be sufficient to cover the total amount intended to be secured. As to the effect of not closing the account upon notice of a second mortgage being received, see *Deeley* v. *Lloyds Bank*, [1912] A. C. 756, and *Re Chute*, [1914] 1 I. R. 180, and compare sect. 94 of the L. P. Act, 1925, set out under General Remarks, above, as to further advances.

(*p*) As to mortgages for securing further advances, see Dav. Prec. Conv., 4th ed., Vol. II., Pt. II., pp. 260 and 380, and General Remarks, above. Any proviso limiting the amount recoverable under such a mortgage appears to be better omitted, since under sect. 88 of the Stamp Act, 1891, the deed will be a good security for whatever amount the *ad valorem* stamp will carry; and (if the proviso be omitted) the amount may be extended by increasing the stamp. Observe that this section exempts from the *ad valorem* duty on a mortgage security (amongst other money) money to be advanced for keeping up any policy of life assurance comprised in such security, or for effecting in lieu thereof any new policy.

Notice of the assignment of a policy of assurance should be given to the office by which it is granted.

aforesaid, from the time of the same being advanced or becoming due : AND ALSO if the said sum of £—— [*sum already owing*], or any sum which may hereafter be advanced or become due as aforesaid, shall remain unpaid after the day hereinbefore appointed for payment thereof respectively, will so long as the same sum, or any part thereof, shall remain unpaid, pay to the mortgagee interest on the principal sum for the time being remaining unpaid, at the rate of —— per cent. per annum, by equal half-yearly payments, on the —— day of ——, and the —— day of —— :

—and interest after default;

2. The owner AS BENEFICIAL OWNER Doth hereby assign unto the mortgagee ALL THAT policy of assurance in the name and on the life of the owner, granted by the —— Assurance Society, dated the —— day of ——, numbered ——, for the sum of £——, and under the annual premium of £——, and all money payable thereunder, and the full benefit thereof, TO HOLD unto the mortgagee subject to the proviso for redemption hereinafter contained.

Assignment of policy.

3. PROVIDED, that, if the owner shall pay to the mortgagee the said sum of £—— [*the sum already owing*], with interest thereon in the meantime at the rate aforesaid, on the —— day of —— next, and shall also, on such —— day of ——, or —— day of ——, as shall happen next after the time of the same respectively being advanced or becoming due, pay to him such other money as may be advanced by him to or on account of, or may become due to him from the owner, with interest thereon at the rate aforesaid, from the time or times of the same respectively being advanced or becoming due, then the mortgagee will, at any time thereafter, at the request and cost of the owner, either execute a receipt for the mortgage money in manner prescribed by the Law of Property Act, 1925, or re-assign to the owner the said policy and premises or as he shall direct :

Proviso for redemption.

4. The owner Doth hereby covenant with the mortgagee (1) THAT during the continuance of this security the owner will not do or suffer anything whereby the said policy may become void or voidable, or the mortgagee may be hindered from receiving or recovering any of the money payable thereunder; (2) THAT if the said policy, or any policy to be effected as hereinafter provided, shall become void, the owner will immediately effect a new policy or policies on his life, in the name of the mortgagee or in such name or names as the mortgagee shall direct in such amount as would have been payable under the void policy if the owner had then died; (3) that if any such policy shall become voidable the owner will forthwith at his own cost do all things necessary for restoring and keeping on foot the same; (4) THAT every such new policy and the money payable thereunder shall

Covenant by mortgagor not to vitiate policy;

—if vitiated, to effect new policy;

PRECEDENT XII.

OF A POLICY OF ASSURANCE.

be held and applied subject to redemption in like manner as the policy hereinbefore assigned and the money payable under that policy (*q*); (5) THAT the owner will, from time to time, pay the said premium of £——, and any other sum necessary for keeping on foot the policy hereinbefore assigned and any policy to be so effected as aforesaid, on [within —— days after] the first day on which the same respectively ought to be paid, and forthwith deliver the receipt for every such payment to the mortgagee; (6) THAT the owner will, on demand, repay to the mortgagee all money expended by the mortgagee in keeping on foot the existing policy, or effecting or keeping on foot any such new policy as aforesaid, with interest thereon, at the rate aforesaid, from the date of such expenditure; and (7) THAT, until such money shall be repaid with interest, the existing policy, and any new policy to be effected as aforesaid, and all money payable thereunder, shall be charged with the payment thereof.

—to pay premiums, and repay, with interest, all money expended by mortgagee in keeping on foot policy;

—that till repayment the same shall be a charge on the premises.

Power to surrender policies.

5. Any sale, under the statutory power in that behalf, either of the existing policy or of any new policy to be effected as aforesaid, may be made, either by way of surrender to the office by which the same respectively has been or may be granted, or otherwise (*r*). IN WITNESS, &c.

XIII.

PRECEDENT XIII.

OF LIFE INTEREST IN LAND AND POLICY OF ASSURANCE.

MORTGAGE *of* LIFE INTEREST *in* LAND *and a* POLICY *of* ASSURANCE *to* SEVERAL. VARIATIONS *for a* STOCK MORTGAGE (*s*).

THIS MORTGAGE, made, &c., BETWEEN A., of, &c. (herein called "the owner," which expression [*&c., as in Precedent I.*]),

(*q*) These covenants—not to vitiate the policy, and to effect a new policy—may be dispensed with, if the mortgagee chooses to rely wholly on the existing policy. Otherwise it is desirable to have a specific engagement by the mortgagor to keep an assurance subsisting.

(*r*) If the mortgage is made to the trustees of the assurance society or to the society itself, add here :—

"AND in the event of such sale being made to [*the mortgagees*] by way of surrender to themselves, the same shall be valid and unimpeachable if made at the customary surrender value as ascertained by the tables for the time being in use by them or fixed by their actuary or other proper officer for the time being."

It is also usual in mortgages of that description to provide that the principal money and interest shall be paid at the principal office for the time being of the society. With respect to a mortgage of this kind to the society, it should be observed that its effect may be to extinguish the policy at law, and that a charge on the policy is by some offices preferred for that reason (see Precedent XVII.); but of course there is no extinguishment in equity.

(*s*) In this Precedent the policy is assumed to be in the name of the mort-

PRECEDENT XIII.

OF LIFE INTEREST IN LAND AND POLICY OF ASSURANCE.

of the one part, and B., of, &c., C., of, &c., and D., of, &c. (herein called "the mortgagees," which expression, where appropriate, includes persons deriving title under them), of the other part. WHEREAS under a Settlement ["dated, &c." *or* "created by a Will," *or as the case may be*] the owner is entitled to a life interest in the settled land and capital money specified in the Schedule hereto. AND WHEREAS the owner is entitled to the policy of assurance on his own life, hereinafter assigned. AND WHEREAS the mortgagees have agreed to lend to the owner the sum of £——, upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— paid by the mortgagees to the owner out of money belonging to them on a joint account (the receipt whereof the owner doth hereby acknowledge):

Recital of title to life interest;

—to policy;

—of agreement for loan.

1. [*Covenant to pay principal and interest as in Precedent I., substituting* "mortgagees" *for* "mortgagee."]

2. The owner, AS BENEFICIAL OWNER, Doth hereby assign and convey (*t*) unto the mortgagees: FIRST, ALL THAT the life interest of the owner in the settled land and capital money specified in the Schedule hereto; SECONDLY, ALL THAT policy of assurance on the life and in the name of the owner granted by the —— Assurance Society dated the —— day of —— and numbered —— for the sum of £—— and under the annual premium of ——. And all money thereby assured or to become payable thereunder and the full benefit thereof TO HOLD unto the mortgagees subject to the proviso for redemption hereinafter contained.

Assignment of life interest and policy.

Habendum for term of years.

Proviso for redemption.

3. PROVIDED, that, if the owner shall, on the —— day of —— next, pay to the mortgagees the sum of £——, with interest thereon from the date hereof, at the rate of —— per cent. per annum, then the mortgagees will, at any time thereafter, at the request and cost of the owner, either execute [*&c. as at p.* 363] or reassign unto the owner the premises hereinbefore assigned, or as the owner shall direct.

4. The owner Doth hereby covenant with the mortgagees [and with each of them (*u*)] [*continue covenants* (1) *to* (6) *as in last Precedent, substituting* "mortgagees" *for* "mortgagee,"

---

gagor, but in the next Precedent the policy is assumed to have been effected in the name of the mortgagee, as is sometimes done when the policy is effected contemporaneously with the mortgage, though it is more usual now to effect the policy in the name of the mortgagor.

(*t*) An assignment of the life interest will not affect the statutory powers of the tenant for life further than by preventing them from being exercised to the prejudice of the assignee (see S. L. Act, 1925, s. 104, at p. 80).

(*u*) These words may now be omitted: see L. P. Act, 1925, s. 81.

PRECEDENT XIII.

OF LIFE INTEREST IN LAND AND POLICY OF ASSURANCE.

and proceed:] and (7) THAT until such money shall be repaid with interest as aforesaid, the life interest hereinbefore assigned, and the existing policy and any new policy to be effected as aforesaid, and all money payable under any such policy, shall be charged with the payment thereof.

That the same shall be charged on policy money.

5. [*Power to surrender policies, as in last Precedent.*]

6. [*Covenant to repair and insure, as in Precedent IV., but saying* "during his life and during the continuance, &c."]

7. [*Other clauses as required: see Precedent IV.*] (*x*). IN WITNESS, &c.

SCHEDULE—*Particulars of settled land and of capital money.*

(*x*) If it is desired to secure the retransfer of stock sold to raise the sum advanced, the following clause (which seems preferable to the ordinary stock mortgage, as to which see Dav. Prec. Conv., Vol. ii., Pt. ii., 4th ed., p. 624, n. (*a*), and *Re Chesterman*, [1923] 2 Ch., at p. 485; and which is not a proper investment for trustees, see *Bromley* v. *Kelly* (1870), 39 L. J. Ch. 274) may be inserted here as follows :—

Provision for the transfer of stock in lieu of payment of the principal.

"PROVIDED that the mortgagees may elect, in lieu of the payment to them, pursuant to the covenant hereinbefore contained, of the said sum of £—— [*sum advanced*], or so much thereof as shall for the time being remain unpaid, to have the sum of £—— Two-and-a-half per Cent. Consolidated Stock [*amount of stock sold*] transferred into their names, and that in the event of such election being made, the sum of £—— like Stock shall be taken by the mortgagees in full satisfaction of the said sum of £—— [*sum advanced*] hereby secured, and all covenants and provisions herein contained, or by law implied for securing and enforcing the payment of the said sum of £—— [*sum advanced*] (including the power for the mortgagees to apply in satisfaction thereof money produced by a sale under the statutory power of sale), shall be applicable for securing and enforcing the transfer into the names of the mortgagees, of the said sum of £—— like Stock as aforesaid, and that such election may be made by the mortgagees at any time until the whole of the said sum of £—— [*sum advanced*] shall have been actually repaid to them, and so that if a part only of the said sum of £—— [*sum advanced*] shall remain unpaid, a proportionate part of the said sum of £—— like Stock shall be transferable in satisfaction of the principal sum so remaining unpaid."

XIV.

PRECEDENT XIV.

OF A CONTINGENT INTEREST IN LAND AND POLICY OF ASSURANCE.

MORTGAGE *of a* CONTINGENT INTEREST *in* FREEHOLDS, *and of a* POLICY *of* ASSURANCE *in the* NAME *of the* MORTGAGEE (*y*).

THIS MORTGAGE, made, &c., BETWEEN A., of, &c. (herein called "the owner," which expression [*&c., as in Precedent I.*]), of the one part, and B., of, &c. (herein called "the mortgagee," which expression [*&c., as in Precedent I.*]), of the other part. WHEREAS under a Settlement ["dated, &c." *or* "created by a Will, &c." *or as the case may be*] the owner is entitled to a life interest subject to the contingency of his surviving —— (*z*) in the settled land and capital money specified in the Schedule hereto. AND WHEREAS the mortgagee has agreed to lend to the owner the sum of ——, upon having the repayment of the same with interest, as hereinafter mentioned, secured in manner hereinafter appearing. AND WHEREAS, as part of the intended security, the owner has effected an insurance, in the name of the mortgagee, with the —— Assurance Society, by a policy numbered ——, dated ——, and under the annual premium of £——, for the sum of £—— to become payable if the owner shall die in the lifetime of the said —— (*z*). NOW THIS DEED WITNESSETH, that, in consideration of the sum of £—— paid by the mortgagee to the owner (the receipt whereof the owner doth hereby acknowledge) :

Recital of title to contingent interest;

—of agreement for loan;

—of policy of assurance effected in mortgagee's name.

1. The owner [*covenant to pay principal and interest, as in Precedent I.*]

2. The owner AS BENEFICIAL OWNER Doth hereby assign and convey unto the mortgagee, ALL THAT the contingent interest of the owner in the settled land and capital money specified in the Schedule hereto, TO HOLD unto the mortgagee, subject to the life interest of the said ——, and to the contingency of the interest of the owner being defeated by his death in the lifetime of the said ——, and to the proviso for redemption hereinafter contained.

Conveyance of the estate.

3. PROVIDED that if the owner shall pay to the mortgagee the sum of £——, with interest thereon from the date hereof at the rate of —— per cent. per annum, on the —— day of —— next, the mortgagee will, at any time thereafter, at the request and cost of the owner either execute [*&c. as at p.* 363] or re-assign to the owner the premises (subject as aforesaid) or as the owner shall direct. [*Covenants as to the policy, &c., as in Precedent XII.*]. IN WITNESS, &c.

Proviso for redemption.

SCHEDULE—*Particulars of settled land and capital money.*

(*y*) As to a mortgage of a mere expectancy, see Withers on Reversions (1910), p. 27, and *Re Lind*, [1915] 2 Ch. 345.

(*z*) The tenant for life and mother of the mortgagor.

XV.

PRECEDENT XV.

OF LIFE INTEREST IN SETTLED PERSONAL ESTATE AND POLICIES.

MORTGAGE *of* LIFE INTEREST *in* SETTLED PERSONAL ESTATE, *and of* POLICIES *of* ASSURANCE.

THIS MORTGAGE, made, &c., BETWEEN A., of, &c. (herein called "the owner," which expression [*&c., as in Precedent I.*]), of the one part, and C., of, &c., D., of, &c., and E., of, &c. (herein called "the mortgagees," which expression [*&c., as in Precedent XIII.*]), of the other part: WHEREAS, under a Settlement (herein called "the settlement"), dated, &c., and made between [*parties*] being a settlement made in consideration of the marriage then intended and shortly afterwards solemnised between the owner and the said [*intended wife*] (herein called "the wife"), the owner became entitled to receive for his own benefit during his life the income of certain funds thereby settled by or on behalf of the owner, or of any funds which by means of any change of investment or otherwise might represent the same (herein called "the husband's fund"), and also in the event of his surviving the wife to receive for his own benefit from and after her death, and during the remainder of his life, the income of certain funds thereby settled by or on behalf of the wife, or of any funds which by means of any change of investment or otherwise might represent the same (herein called "the wife's fund"): AND WHEREAS the husband's fund is represented by the investments specified in the First Schedule hereto and the wife's fund is represented by the investments specified in the Second Schedule hereto, all of which are now standing in the names or under the legal control of P. and Q. as the present trustees of the settlement: AND WHEREAS the owner is entitled to the policies of assurance upon his own life described in the Third Schedule hereto: AND WHEREAS the mortgagees have agreed to lend to the owner the sum of £—— upon having the repayment thereof with interest at the rate hereinafter mentioned secured in manner hereinafter appearing: NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid by the mortgagees to the owner out of money belonging to them on a joint account (the receipt whereof the owner doth hereby acknowledge).

Recital of settlement creating life interest.

Present state of investment: title to policies, &c.

1. [*Covenant by the owner with* "the mortgagees" *to pay principal and interest as in Precedent I., substituting* "mortgagees" *for* "mortgagee."]

2. The owner AS BENEFICIAL OWNER Doth hereby assign unto the mortgagees: FIRST, ALL the income which during the life of the owner shall arise from the husband's fund: SECONDLY, ALL

Assignment of life interest;

the income which after the death of the wife and thenceforth during the life of the owner, if he shall survive her, shall arise from the wife's fund: AND THIRDLY, ALL THOSE policies of assurance on the life of the owner, the particulars whereof are specified in the Third Schedule hereto, and all money payable thereunder, and the full benefit thereof respectively: TO HOLD unto the mortgagees, subject to the proviso for redemption hereinafter contained.

—and policies.

3. [*Proviso for redemption, as in Precedent XIII.*]

4. [*Covenants* (1) *to* (6) *by owner to keep up policies, substituting* "policies" *for* "policy," *and adding where necessary,* "or any of them," *and substituting for* "new policy" *the words* "new policy or policies," *as in Precedent XIII., and proceed*] and (7): THAT until such money shall be repaid with interest as aforesaid, the premises hereinbefore assigned and all money payable under such policies, or any of them, and any new policy or policies, shall be charged with the payment thereof.

5. [*Power to surrender policies* (*similarly varied*), *as in Precedent XII.*]

Declaration as to costs of mortgagees, for distringas or stop orders.

6. PROVIDED, that all costs, charges and expenses which may be incurred by the mortgagees in placing, removing, renewing, or replacing any distringas notices, or stop or restraining or charging orders for the purpose of completing, protecting, or enforcing this security or otherwise in relation thereto, shall be paid on demand by the owner with interest at the rate aforesaid from the time of the same respectively having been incurred, and shall in the meantime be a charge upon the premises hereby assured. IN WITNESS, &c. (*a*).

FIRST SCHEDULE—*The husband's fund.*

SECOND SCHEDULE—*The wife's fund.*

THIRD SCHEDULE—*Life policies.*

(*a*) Notices of the charge should be given to each of the trustees of the settlement, and to the offices granting the various policies charged. It is usual, before advancing money on such a mortgage, to inquire of the trustees of the fund whether they have received notice of any and what incumbrances. As to whether such an inquiry need be answered, and whether any answer given can be relied on, see *Low* v. *Bouverie*, [1891] 3 Ch. 82; *Re Dartnall*, [1895] 1 Ch. 474, and *per* Lord Haldane in *Nocton* v. *Ashburton*, [1914] A. C. 932, at p. 950. See also Withers on Reversions (1910), pp. 14—16.

XVI.

PRECEDENT XVI.

OF REVERSIONARY INTEREST IN FUNDS IN COURT.

MORTGAGE *of* REVERSIONARY INTEREST *in Funds in Court.* PROVISION *for payment of* COMPOUND INTEREST (*b*).

THIS MORTGAGE, made, &c., BETWEEN A., of, &c. (herein called "the owner," which expression [*&c., as in Precedent I.*]), of the one part; and B., of, &c., C., of, &c., and D., of, &c. (herein called "the mortgagees," which expression, where appropriate, includes persons deriving title under them), of the other part : WHEREAS under the Will, dated the —— day of ——, of the late M. B., who died on the —— day of ——, and whose Will was proved in the —— Registry on the —— day of ——, by the executors therein named, the owner, as one of the —— children of the said M. B., living at his death, is entitled in reversion expectant on the death of his mother P. B., and subject to her life interest under the trusts of the Will, to one equal —— share in the residuary estate of the said M. B., and the money and investments for the time being representing the same, and the owner will or may in the event of the death of any of his brothers under the age of twenty-one years, or of any of his sisters under that age and without having been married, be or become entitled to some further or other share or shares therein : AND WHEREAS the residuary estate of the said M. B. now consists of or is represented by the following particulars, that is to say (1) the investments specified in the First Part of the Schedule hereto, and standing in the name of the Paymaster-General to the credit of an action, *Re* B., B. *v.* X., 19—, B. 200 (being an action for the administration of the estate of the said M. B.) "the account of the residue," and (2) the mortgage debts specified in the Second Part of the same Schedule, and vested, with the securities for the same, in X. and Y. as the present trustees of the Will : AND WHEREAS the mortgagees have agreed to lend to the owner the sum of £——, upon having the repayment thereof, with interest thereon at the rate hereinafter mentioned, secured in manner hereinafter appearing : NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid to the owner by the mortgagees out of

Title of mortgagor to absolute and contingent shares in the residuary estate of his father.

Present state of investment of the property mortgaged.

Agreement for loan.

(*b*) Compare the next Precedent, where the loan is expressly continued until the reversionary interest falls into possession, and consider the remarks of Younger, L.J., in his dissenting judgment in *Re Chesterman*, [1923] 2 Ch., at p. 494, who held that on the construction of the mortgages no principal or interest was payable until the fund fell in by the death of the tenant for life. As to when the mortgage debt as regards the proceeds of sale of real estate may be barred under sect. 8 of the Real Property Limitation Act, 1874, see *Re Witham*, [1922] 2 Ch. 413.

money belonging to them on a joint account (the receipt whereof the owner doth hereby acknowledge).

PRECEDENT XVI.

OF REVERSIONARY INTEREST IN FUNDS IN COURT.

1. [*Covenant by the owner with the mortgagees to pay principal and interest, as in Precedent I., substituting* "mortgagees" *for* "mortgagee."]

Assignment of reversionary share.

2. The owner AS BENEFICIAL OWNER Doth hereby assign unto the mortgagees, ALL THAT one equal —— share to which the owner is entitled as aforesaid, and any further or other share to which he may be or become entitled in the said investments and mortgage debts now constituting or representing the residuary estate of the said M. B., and in all other (if any) the money and investments representing the same : TO HOLD unto the mortgagees subject to the aforesaid life interest of the said P. B. under the trusts of the Will, and to the proviso for redemption hereinafter contained.

3. [*Proviso for redemption, as in Precedent XIII.*].

Covenant by mortgagor that interest in arrear shall be capitalised (*d*).

4. The owner Doth hereby covenant with the mortgagees [and with each of them (*c*)] that all interest which shall during the continuance of this security accrue due on the said sum of £——, and all interest which shall accrue due on that interest or upon any other interest which shall be capitalised under this present clause, shall, in case the same shall not be paid within [*twenty-one*] days from the respective times of the same becoming due, become principal, and be added to the said principal sum of £—— as a further advance, and shall carry interest at the rate of —— per cent. per annum, to be computed from the respective times of such interest accruing due, and such interest shall be considered to accrue and shall be payable from time to time on the days hereinbefore appointed for the payment of interest on the said original sum of £——, so that by the addition and capitalisation of the interest as aforesaid the total principal money hereby secured may be augmented upon the footing of an accumulation at compound interest computed at the rate of —— per cent. per annum, with rests taken half-yearly on the days hereinbefore mentioned, and that all additions to the said principal sum of £—— by means of capitalised interest, shall be charged on the said mortgaged premises, and shall to all intents and purposes be within the scope and operation of this security, but so that this provision shall not be deemed to authorise the owner to allow any interest to fall into arrear unless permitted so to do by the mortgagees, and that the owner will, after the

(*c*) These words may now be omitted : see L. P. Act, 1925, s. 81.

(*d*) As to the validity and effect of such a provision, and generally as to the law relating to capitalisation of interest, see General Remarks, p. 325. Compare the next Precedent, where another form will be found.

PRECEDENT XVI.

OF REVERSIONARY INTEREST IN FUNDS IN COURT.

same shall be due, upon demand pay to the mortgagees any interest which shall be capitalised hereunder, and any interest which shall accrue thereon.

Power to obtain stop order.

5. The owner Doth hereby empower the mortgagees at the cost of the owner, to apply for and obtain an order in the said action, prohibiting the transfer or payment of the capital [or income] of the premises hereinbefore assigned without notice to the mortgagees and upon such application to use the name of the owner as a party concurring therein or consenting thereto, and to instruct solicitors and counsel accordingly on behalf of the owner.

Covenant to pay costs of stop order.

6. The owner Doth hereby covenant with the mortgagees [and with each of them] that he will on demand pay to them all costs, charges, and expenses so incurred with interest thereon at the rate of —— per cent. per annum, and Doth hereby charge such amount and interest on the premises hereinbefore assigned (*e*). IN WITNESS, &c.

SCHEDULE—Part I. : *Fund in Court*; Part II. : *Mortgage debts.*

XVII.

PRECEDENT XVII.

OF REVERSIONARY INTEREST IN SETTLED FUNDS AND POLICIES TO AN ASSURANCE SOCIETY.

MORTGAGE *to* ASSURANCE SOCIETY *of* REVERSIONARY INTEREST *in* SETTLED PERSONAL ESTATE *and* POLICIES *granted by the Society. Provision for* CONTINUANCE *of* LOAN *until fund falls into possession or death of Mortgagor,* INTEREST *to be* CAPITALISED.

THIS MORTGAGE, made, &c., BETWEEN A. B., of, &c. [*mortgagor*] (herein called "the owner," which expression, where appropriate, includes persons entitled to redeem this security), of the one part, and The —— Assurance Society, whose registered office is at —— [*mortgagee*] (herein called "the Society," which expression, where appropriate, includes persons deriving title under them), of the other part. WHEREAS under a Settlement (herein called "the settlement"), dated, &c., and made between [*parties*] (being a settlement made in consideration of the marriage shortly afterwards solemnised between the said [*father*] and [*mother*] now C. B.), and in the events which have happened, the owner, as the only child of the said marriage, is absolutely entitled in reversion expectant on the death of his mother the said C. B., and subject to her life interest thereunder, to the entirety of the property subject to the trusts of the settle-

Title of mortgagor to reversionary interest.

(*e*) Notice of the security should be given to the trustees, and a stop order obtained.

ment and the income thereof: AND WHEREAS the property subject to the trusts of the settlement now consists of the investments specified in the First Schedule hereto standing in the names of X. and Y., as the present trustees of the settlement: AND WHEREAS the owner is possessed of the policies of assurance on his life described in the Second Schedule hereto: AND WHEREAS the Society have agreed to lend to the owner the sum of £—— upon having the repayment thereof with interest at the rate of —— per cent. per annum secured in manner hereinafter appearing, and that the said loan shall be continued and the interest thereon forborne in manner hereinafter appearing: NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the Society to the owner (the receipt whereof the owner doth hereby acknowledge).

Present state of investment.

Title to policies (*f*).

Agreement for loan.

1. [*Covenant to pay, &c., as in Precedent I., substituting* "Society" *for* "mortgagee."].

2. The owner AS BENEFICIAL OWNER Doth hereby assign unto the Society ALL THAT his reversionary interest in the investments specified in the First Schedule hereto, and the money and investments for the time being representing the same: TO HOLD unto the Society subject to the life interest therein of the said C. B. under the trusts of the settlement, and to the proviso for redemption hereinafter contained.

Assignment of reversionary interest.

3. [*Proviso for redemption, as in Precedent XIII., substituting* "Society" *for* "mortgagees."].

4. The owner AS BENEFICIAL OWNER Doth hereby covenant with the Society that the owner will at any time whilst any money shall be owing upon the security of these presents upon the request of the Society but at his own cost in all respects assign the policies of assurance described in the Second Schedule hereto and all money payable under the same respectively, unto the Society or such person or persons as they shall direct subject to such right of redemption as would have been subsisting therein in case the same had been assigned unto or in trust for the Society subject to the proviso for redemption hereinbefore contained: AND that in the meantime and until the said policies and money shall be so assigned the same shall be charged with the payment to the Society of the said sum of £—— and interest.

Covenant to assign policies;

—and charge of policies.

5. The owner Doth hereby irrevocably appoint —— and —— and each of them to be the attorneys and attorney of the owner, in his name and on his behalf and as his act and deed to sign, seal, and deliver and otherwise perfect any deed of assignment

Power of attorney to assign policies.

(*f*) It is assumed that these are policies granted by the society. See Precedent XIII., note (*r*).

PRECEDENT XVII.

OF REVERSIONARY INTEREST IN SETTLED FUNDS AND POLICIES TO AN ASSURANCE SOCIETY.

of the said policies or any of them and of the money to become payable under the same respectively which may be desired by the Society in order to vest the same in them or in any person or persons in trust for them subject as aforesaid or in a purchaser from the Society.

Provisoes for continuance of loan; —and for capitalisation of interest.

6. During the joint lives of the owner and the said C. B. the Society shall not call in the said sum of £—— or any part thereof, nor shall the owner be entitled to pay off the said sum of £—— or any part thereof. AND all interest which shall accrue due on the said sum of £—— during such joint lives and all interest which shall accrue due on that interest or upon any other interest which shall be capitalised under this present clause shall be forborne and become principal and be added to the principal sum of £—— as a further advance, and shall carry interest at the rate of —— per cent. per annum to be computed [*continue clause, as in Precedent XVI., down to* "this security," *and proceed*]. AND the owner will after the death of such one of them the owner and the said C. B. as shall first die upon demand pay to the Society any interest which shall be capitalised hereunder and any interest which shall accrue thereon.

7. [*Covenant by mortgagor to keep up policies, as in Precedent XIII., referring to them as* "the policies hereinbefore covenanted to be assigned," *and adding where appropriate,* "or any of them," *and substituting for* "new policy" *the words* "new policy or policies," *and adding also after* "expended or incurred" *the words* "such interest whilst remaining unpaid to be capitalised in the same manner in all respects as if the same had been interest accruing on the said principal sum of £—— with rests taken half-yearly on the days aforesaid."]

8. [*Power to surrender policies (similarly varied, as in Precedent XII.*]

9. [*Declaration as to costs of mortgagees, as in Precedent XV.*] IN WITNESS, &c. (*g*).

FIRST SCHEDULE—*Investments subject to the settlement.*

SECOND SCHEDULE—*Life policies.*

(*g*) Notice of the assignment should be given to the trustees of the settlement, and notice of the charge on the policies entered in the books of the society.

XVIII.

PRECEDENT XVIII.

FURTHER CHARGE ON LIFE INTEREST IN SETTLED PERSONAL ESTATE AND POLICY.

FURTHER CHARGE *by* SUPPLEMENTAL DEED *upon a* LIFE INTEREST *in settled* PERSONAL ESTATE *and a* POLICY, *a* FRESH POLICY *being* ADDED *to the security.*

THIS FURTHER CHARGE, made, &c., BETWEEN A., of, &c. (herein called "the owner," which expression [*&c., as in Precedent I.*]), of the one part, and B., of, &c. (herein called "the mortgagee," which expression [*&c., as in Precedent I.*]), of the other part. WHEREAS these present are supplemental to a Mortgage (herein called "the mortgage") dated, &c., and made between the owner of the one part and the mortgagee of the other part, and being a mortgage of the life interest of the owner in the residuary estate of C. D., deceased, and a policy of assurance on his own life to secure the sum of £—— and interest: AND WHEREAS the said sum of £—— with current interest thereon remains owing to the mortgagee upon the security of the mortgage: AND WHEREAS the owner is possessed of the policy of assurance on his own life, hereinafter assigned: AND WHEREAS the mortgagee has agreed to lend to the owner the further sum of £—— upon having the repayment thereof with interest at the rate hereinafter mentioned secured, and the payment of the said sum of £—— [*the old debt*] and the interest thereon respectively further secured in manner hereinafter appearing. NOW THIS DEED WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of £——, now paid by the mortgagee to the owner (the receipt whereof the owner doth hereby acknowledge) and of the said sum of £—— [*the old debt*] being owing as aforesaid.

Recitals.

That deed is supplemental to mortgage.

State of mortgage debt.

That mortgagor is entitled to fresh policy.

Of agreement for further advance.

1. The owner Doth hereby covenant with the mortgagee that the owner will on the —— day of —— next [*i.e., next half-yearly day fixed by mortgage*] pay to the mortgagee the sum of £—— [*further advance*] with interest thereon in the meantime at the rate of —— per cent. per annum. And if the same sum or any part thereof shall remain unpaid after the said —— day of —— next will thenceforth pay to the mortgagee interest thereon, or on so much thereof as shall, for the time being remain unpaid, at the rate aforesaid, by equal half-yearly payments on the —— day of —— [*half-yearly days fixed by mortgage*].

Covenant to pay further advance and interest.

2. The owner AS BENEFICIAL OWNER Doth hereby assign unto the mortgagee ALL THAT policy of assurance in the name and on the life of the said A., granted by the —— Assurance Society, dated the —— day of —— numbered —— for the sum of £——, and under the annual premium of ——. AND all money payable

Assignment of fresh policy.

PRECEDENT XVIII.

FURTHER CHARGE ON LIFE INTEREST IN SETTLED PERSONAL ESTATE AND POLICY.

thereunder and the full benefit thereof, TO HOLD unto the mortgagee, subject to such right of redemption as immediately after the execution of these presents by the owner will by virtue of the mortgage and these presents be subsisting in and with respect to the premises comprised in and assigned by the mortgage.

Property comprised in mortgage to be charged with further advance.

3. All the premises comprised in and assigned by the mortgage, and also any new policy or policies which may be effected according to the covenant in that behalf contained in the mortgage, and all money payable thereunder, shall be charged with the payment, and shall not be redeemable but upon payment by the owner to the mortgagee of as well the said sum of £—— [*the new debt*] and interest for the same according to the covenant in that behalf hereinbefore contained, as the said sum of £—— [*the old debt*] and the interest due and to become due for the same.

Provisions in mortgage to extend to fresh policy.

4. All the covenants, powers and provisions contained in the mortgage with reference to the policy thereby mortgaged or any substituted policy or policies, or to any money which may be received under or by virtue of the same, and also the other powers and provisions therein contained for securing payment of the said sum of £—— [*the old debt*] and the interest thereon, and in relation to the security created by the mortgage shall respectively extend and be applicable to the said policy hereby assigned and any substituted policy or policies and any money which may be received under or by virtue of the same and otherwise so as to be a security for the said sum of £—— [*the new debt*] and the interest thereon as well as for the said sum of £—— [*the old debt*] and the interest thereon, and for all other principal money and interest intended to be secured by these presents and the mortgage (including particularly money expended in keeping up or restoring any of the said policies and the interest thereon), and generally in the same manner as if the said policy hereby assigned had been comprised in and assigned by the mortgage, and the security created by the mortgage had been for the entire principal money and interest intended to be secured by these presents and the mortgage, and all necessary or proper alterations had been made in the said covenants, powers and provisions contained in the mortgage, regard being had to the addition of the said policy hereby assigned to the change in the amount of the principal money intended to be secured. IN WITNESS, &c. (*h*).

(*h*) Notice of the deed should be given to the trustees of the will and to the insurance office or offices.

XIX.

Mortgage of Freeholds Subject to Prior Charges, a Surety Joining.

Precedent XIX.

of freeholds subject to prior charges.

THIS MORTGAGE, made, &c., BETWEEN A., of, &c. (herein called "the owner," which expression includes persons deriving title under him), of the first part, B., of, &c. (herein called "the surety," which expression includes his personal representatives), of the second part, and C., of, &c. (herein called "the mortgagee," which expression includes persons deriving title under him), of the third part. WHEREAS the owner is seised of the hereditaments hereinafter granted for an estate in fee simple in possession subject to the mortgages hereinafter mentioned. [*Recite agreement for loan by C. to A., as in Precedent I.*] AND WHEREAS the surety has agreed to join in these presents as surety for the owner in manner hereinafter appearing. Now THIS DEED WITNESSETH, that in consideration of the sum of £—— paid by the mortgagee to the owner (the receipt and payment whereof the owner and the surety hereby respectively acknowledge).

Covenant by mortgagor and surety to pay.

1. The owner and the surety Do hereby jointly and severally covenant with the mortgagee that they, or one of them, will pay [*continue, as in Precedent I.*] (*i*).

Conveyance subject to prior mortgages.

2. The owner AS BENEFICIAL OWNER Doth hereby demise unto the mortgagee ALL [*see* PARCELS (*k*)] TO HOLD unto the mortgagee for a term of 3,000 years and two days from the —— day of —— [*date of first mortgage*] without impeachment of waste, SUBJECT to a mortgage thereof (herein called "the First Mortgage"), dated, &c., and made between [*parties*], for securing the sum of £—— and interest, AND ALSO to a mortgage thereof (herein called "the Second Mortgage"), dated, &c., and made between [*parties*], for securing the sum of £—— and interest, and subject to the proviso for redemption hereinafter contained.

(*i*) If so agreed, add here: "PROVIDED that the surety's liability under the above covenant shall be limited in the whole to the sum of £—— for principal and interest," and in clause 6 add after "hereby secured" the words "but not exceeding the sum of £—— hereinbefore mentioned." As to the equitable right of a surety to compel the principal debtor to relieve him from liability by discharging the debt, see *Ascherson* v. *Tredegar & Co.*, [1909] 2 Ch. 401; *Morrison* v. *Barking, &c., Co.*, [1919] 2 Ch. 325.

(*k*) It is thought it may be prudent to add after the description, "Together with all documents of title which now are or during the continuance of this security shall be in the custody of the owner or which he can procure without legal proceedings." See General Remarks, above, p. 343.

PRECEDENT XIX.

OF FREEHOLDS SUBJECT TO PRIOR CHARGES.

3. [*Proviso for redemption, beginning* "Provided that if the owner or the surety shall pay" *proceeding as in Precedent IV., adding,* "subject to the First and Second Mortgages, if and so far as then subsisting."]

4. [*Covenant to repair and insure, as in Precedent I.*]

5. [*Covenant against registration if required, as in Precedent IV.*]

Surety to be liable as principal.

6. PROVIDED, that although as between the owner and the surety the surety is only a surety for the owner, yet as between the surety and the mortgagee, the surety shall be deemed to be a principal debtor for the principal money and interest hereby secured, so that the surety shall not be released by time being given to the owner, or by any other act or omission of the mortgagee, or matter or thing whatsoever whereby the surety, as a surety only, would be released. IN WITNESS, &c. (*l*).

SCHEDULE—*Description of hereditaments.*

XX.

PRECEDENT XX.

PRIOR MORTGAGEE POSTPONING HIS SECURITY.

MORTGAGE *of* FREEHOLDS *where a* PRIOR MORTGAGEE *joins to* POSTPONE *his security.*

THIS MORTGAGE, made, &c., BETWEEN A., of, &c. (herein called "the owner"), of the first part, B., of, &c. (herein called "the prior mortgagee"), of the second part, and C., of, &c. (herein called "the new mortgagee"), of the third part: WHEREAS by a Mortgage (herein called "the prior mortgage"), dated, &c., and made between the owner of the one part, and the prior mortgagee of the other part, the hereditaments hereinafter described were demised to the prior mortgagee by way of mortgage for securing the sum of £—— and interest, for a term of 3,000 years from the date thereof, without impeachment of waste, subject to redemption as therein mentioned, and the said sum of £—— with current interest thereon is now owing to the prior mortgagee on the security of the prior mortgage: AND WHEREAS the new mortgagee has agreed to lend to the owner the sum of £—— upon having the repayment thereof with interest secured in manner hereinafter appearing: AND WHEREAS the prior mortgagee at the request of the owner has agreed to join in these

Recital of prior mortgage and state of debt.

—of agreement for loan;

—that prior mortgagee will postpone.

(*l*) This form can be adapted to a "legal charge" subject to prior legal charges: see Precedent I.

PRECEDENT XX.

PRIOR MORTGAGEE POSTPONING HIS SECURITY.

presents for the purpose of postponing his security to the security intended to be hereby made. NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— paid by the new mortgagee to the owner (the receipt whereof the owner doth hereby acknowledge).

1. [*Covenant by owner to pay principal and interest as in Precedent I., substituting* " new mortgagee " *for* " mortgagee "].

Assignment of prior mortgage term to new mortgagee.

2. The prior mortgagee at the request of the owner Doth hereby AS MORTGAGEE assign, and the owner Doth hereby AS BENEFICIAL OWNER demise and confirm unto the new mortgagee ALL the hereditaments described in the Schedule hereto; TO HOLD unto the new mortgagee for the residue of the term of 3,000 years created by the prior mortgage Discharged from all claims under the prior mortgage, But subject to the proviso for redemption hereinafter contained.

Proviso for redemption of new mortgage.

3. PROVIDED, that if the owner shall pay to the new mortgagee on the —— day of —— next [*six months from date*] the sum of £—— [*principal advanced by new mortgagee*] with interest thereon in the meantime at the rate aforesaid, the new mortgagee will at any time thereafter, at the request and cost of the owner (1) if the prior mortgage shall be then subsisting, re-assign unto the prior mortgagee the said hereditaments for the residue of the term created by the prior mortgage, subject to such right of redemption as would have been subsisting therein by virtue of the prior mortgage, if these presents had not been made, and so as to restore the security thereby created with all the powers and provisions incidental thereto, or (2) if the prior mortgage shall then have been redeemed, will either execute a receipt in the manner prescribed by the Law of Property Act, 1925, or surrender to the owner the mortgage term, or as the owner shall direct.

Demise to prior mortgagee for new term.

4. The owner Doth hereby AS BENEFICIAL OWNER demise unto the prior mortgagee the said hereditaments, TO HOLD unto the prior mortgagee for a term of 3,000 years and one day from the date of the prior mortgage, without impeachment of waste, subject to the proviso for redemption hereinafter contained.

Proviso for redemption of prior mortgage.

5. PROVIDED, that if the owner shall pay to the prior mortgagee on the —— day of —— next [*next half-yearly day under prior mortgage*] the sum of £—— [*principal advanced by prior mortgagee*] with interest thereon at the rate mentioned in the prior mortgage, the prior mortgagee will, at any time thereafter, either execute a receipt in the manner prescribed by the Law of Property Act, 1925, or surrender to the owner the mortgage term or terms then vested in him, or as the owner shall direct.

6. [*Covenant by owner with new mortgagee to repair and*

PRECEDENT XX.

PRIOR MORTGAGEE POSTPONING HIS SECURITY.

insure buildings and other covenants as required, see Precedent IV.]

7. The prior mortgagee doth hereby acknowledge the right of the new mortgagee to production and to delivery of copies of the prior mortgage (*ll*).

Acknowledgment.

Interpretation.

8. Where appropriate, the expressions "the owner," "the prior mortgagee," and "the new mortgagee," include persons deriving title under each of them. IN WITNESS, &c.

SCHEDULE—*Description of hereditaments.*

XXI.

PRECEDENT XXI.

UNDER JOINT GENERAL POWER OF APPOINTMENT.

MORTGAGE *of* FREEHOLDS *by* TENANT FOR LIFE *of* SETTLED LAND *where on the marriage of the son the father and son have a* JOINT GENERAL POWER OF APPOINTMENT *over the settled land* (*m*).

THIS MORTGAGE, made, &c., BETWEEN A. B., of, &c. [*father and tenant for life*] (herein called "the tenant for life"), of the first part, and the tenant for life and his son C. B. (herein collectively called "the appointors"), of the second part, X., of, &c., and Y., of &c. (herein called "the trustees"), of the third part, and D. E., of, &c., and F. G., of, &c. (herein called "the mortgagees," which expression includes persons deriving title under them), of the fourth part : WHEREAS by a Settlement (herein called "the settlement"), dated, &c. [*before* 1926] and made between [*parties*] being a settlement made in consideration of the marriage then intended and shortly afterwards solemnised between the said C. B., and M. H., (afterwards M. B.) [*son's wife*] the hereditaments hereinafter described were limited after the said marriage to the use of such person or persons, and in such manner as the appointors, during their joint lives, by any deed or deeds should appoint, and in default of and subject to such appointment to the use of the tenant for life during his life, without impeachment of waste with remainders; to the uses, upon the trusts and subject to the powers and provisions therein contained : AND WHEREAS by a Vesting Deed, dated, &c., and

Recital of settlement;

—of vesting deed.

(*ll*) The new mortgagee will give to the prior mortgagee a separate acknowledgment as to the documents of title (including this deed) retained by him.

(*m*) This mortgage (which, if preferred, may also be made by charge by way of legal mortgage, see Precedent I.) is effected under sect. 16 of the S. L. Act, 1925, so as to pass the legal estate to the mortgagees, for the power vested in the appointors has been changed from a legal to an equitable power (see L. P. Act, 1925, sect. 1, sub-sect. (7), set out under ABSTRACTS).

PRECEDENT XXI.

UNDER JOINT GENERAL POWER OF APPOINTMENT.

made between the trustees of the one part, and the tenant for life of the other part, the same hereditaments were vested in the tenant for life in fee simple upon the trusts, and subject to the powers and provisions upon and subject to which the same ought to be held under the settlement, or otherwise : AND WHEREAS the appointors in exercise of their joint power of appointment require to raise the sum of £——, on the security of the said hereditaments, and the mortgagees have agreed to lend to the appointors the said sum of £——, upon having the repayment thereof with interest as hereinafter mentioned, secured in manner hereinafter appearing, and the tenant for life has, at the request of the said C. B., agreed to exercise his power as estate owner conferred on him by sect. 16 of the S. L. Act, 1925, so as to pass such legal estate as may be required for giving legal effect to the mortgage hereby made : NOW THIS DEED WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of £——paid by the mortgagees out of money belonging to them on a joint account to the appointors by direction of the trustees (the receipt and payment whereof the appointors and the trustees do hereby respectively acknowledge).

Agreement for loan.

1. [*Joint and several covenant by appointors with mortgagees to pay principal and interest, see Precedent I.*].

2. The tenant for life in exercise of the power conferred by and pursuant to sect. 16 of the S. L. Act, 1925, and of all other powers Doth hereby AS TRUSTEE demise and the appointors Do hereby AS BENEFICIAL OWNERS appoint, demise and confirm unto the mortgagees ALL THOSE hereditaments described in the Schedule hereto, and all other (if any) the hereditaments which by the settlement were subjected to the joint appointment of the appointors, TO HOLD unto the mortgagees [*continue as in clause 2 of Precedent IV.*].

Demise.

3. PROVIDED that if the appointors or either of them or their appointees or other persons or person entitled to redeem this security shall on the —— day of —— next pay to the mortgagees the sum of £—— with interest thereon in the meantime at the rate aforesaid the mortgagees will at any time thereafter at the request and cost of such persons or person either execute a receipt in the manner prescribed by the Law of Property Act, 1925, or surrender to such persons or person the term hereby created or as such persons or person shall direct having regard to the trusts, powers and provisions of the settlement so far as the same are then subsisting.

Proviso for redemption.

4. As between the tenant for life and the said C. B. the tenant for life and his personal representatives shall be primarily liable, and as between the tenant for life and his personal represen-

Order of liability as between mortgagors

PRECEDENT XXI.

UNDER JOINT GENERAL POWER OF APPOINTMENT.

themselves and mortgagors and land.

tatives and the other persons entitled to redeem this security the mortgaged property shall be the primary fund for the payment of the said sum of £—— and interest. But this provision shall not affect the mortgagees or preclude them from resorting to the tenant for life or to the said C. B. or to the personal representatives of either of them or to the mortgaged property at the same time or in such order and manner as the mortgagees shall think fit.

[*Other provisions as required, see Precedent IV.*].

IN WITNESS, &c.

SCHEDULE—*Description of hereditaments.*

XXII.

PRECEDENT XXII.

OF TERM TO RAISE PORTION.

MORTGAGE *of a* TERM *of Years for raising a* PORTION (*n*).

Parties.

THIS MORTGAGE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (herein called "the term trustees"), of the first part; E. F., of, &c. (herein called "the tenant for life"), of the second part; G. F., of, &c. (herein called "the portionist"), of the third part; and J. K., of, &c. [*mortgagee*] (herein called "the mortgagee," which expression includes persons deriving title under him), of the fourth part: WHEREAS L. F., late of ——,

Recital of will creating the term;

deceased, by his Will dated the —— day of ——, devised all his real estate in the County of ——, to the use of the term trustees for the term of 500 years, from his death, without impeachment of waste, upon the trusts thereinafter declared, and from and after the determination of the said term, and in the meantime subject thereto and to the trusts thereof, to the use of the tenant for life, his eldest son, for his life without impeachment of waste with remainders over in settlement; And declared that the premises were so devised to the term trustees for the said term of 500 years upon trust (among other things) that if the testator should have any younger child or children as therein defined the

---

(*n*) This is an example of an assignment of a portions term by way of mortgage (see Statutory Specimen No. 3 under ABSTRACTS, p. 14), and the mortgage so created is equitable only, but could be converted into a legal mortgage if the tenant for life (being estate owner in fee simple by virtue of the vesting deed which could be recited) were "pursuant to sect. 16 of the S. L. Act, 1925," to demise and confirm, or the tenant for life might, it is thought, create a new term (say of 3,000 years), the term trustees assigning and confirming according to their estate and interest (compare the preceding Precedent).

As to the alternative method of raising portions out of capital money, see *Re Gisborough*, [1921] 2 Ch. 39.

As to the previous practice of mortgages for raising portions, see Dav. Prec. Conv., vol. ii., pt. ii., 4th ed., pp. 460, &c.

PRECEDENT XXII.

OF TERM TO RAISE PORTION.

term trustees should, by demise, assignment, mortgage, sale, or other disposition of the premises, or of part thereof, for all or any part of the said term of 500 years, or by such other means as therein mentioned, raise the sum of £5,000, for the portion of each younger child, and pay the same to him or her or to his or her personal representatives, and the testator appointed the term trustees executors thereof : AND WHEREAS the testator died on the —— day of —— [*before* 1926] and his said Will was proved by the term trustees in the —— Registry on the —— day of —— : AND WHEREAS the portionist is one of the younger children of the testator, and has attained the age of twenty-one years : AND WHEREAS the said portion or sum of £5,000 to which the portionist as one of such younger children is entitled under the trusts of the said term as aforesaid is owing to him, but all interest thereon (*o*) has been paid down to the date of these presents, and he has required that the same shall be raised and paid to him : AND WHEREAS the legacy duty on the said sum of £5,000 has been paid by the portionist out of his own money and a proper receipt for the same has been taken (*p*) : AND WHEREAS the mortgagee has at the request of the said term trustees agreed to pay to the portionist the said sum of £5,000 upon having the repayment thereof with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing, the tenant for life agreeing to enter into the covenant hereinafter contained for payment of the interest thereon : NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £5,000 paid to the portionist by the mortgagee by the direction of the term trustees (the receipt whereof the portionist doth hereby acknowledge, and the payment whereof to him the term trustees do hereby admit),

—of death of testator probate of his will;

—that portion remains owing;

—that the legacy duty has been paid;

—of agreement for payment by mortgagee and security.

1. The term trustees AS TRUSTEES Do hereby assign unto the mortgagee ALL THAT [*see* PARCELS], all which premises are part of the hereditaments so devised or limited by the said Will to the term trustees as aforesaid TO HOLD unto the mortgagee for the residue of the said term of 500 years subject to the proviso for redemption hereinafter contained (*q*).

Assignment.

Habendum.

2. PROVIDED that, if the term trustees for the time being or their assigns or the tenant for life or any other persons or person interested in the inheritance of the said premises in remainder

Proviso for redemption.

(*o*) Portions carry interest of their own nature.

(*p*) It seems desirable to recite that the duty has been paid, and best to treat it as paid in this way, unless the trustees pay it out of other money, in which case the mortgage would be for the balance. The trustees can at the same time raise the incidental costs : *Armstrong* v. *Armstrong* (1874), 18 Eq. 541.

(*q*) Mortgages of this nature are frequently made by sub-demise, but it is better to assign the term : see *Re Moore and Hulme*, [1912] 2 Ch. 105.

PRECEDENT XXII.

OF TERM TO RAISE PORTION.

expectant upon the determination of the said term of 500 years or entitled to redeem this security shall, on the —— day of —— next, pay to the mortgagee the said sum of £5,000, with interest for the same in the meantime at the rate of —— per cent. per annum, the mortgagee will at the request and cost of such persons or person either execute a receipt in the manner prescribed by the Law of Property Act, 1925, or reassign or surrender the premises unto them or him or as they or he shall direct.

Mortgage money deemed to become due in six months.

3. For the purposes of the power of sale and other powers in these presents implied by statute, the said sum of £5,000 shall be deemed to become due on the said —— day of —— next.

Interest to be paid half-yearly.

4. If the said sum of £5,000, or any part thereof, shall remain unpaid after the said —— day of —— next, then, so long as the same sum or any part thereof shall remain unpaid, interest at the rate of —— per cent. per annum for the sum so remaining unpaid shall be paid to the mortgagee, by equal half-yearly payments on the -—— day of —— and the —— day of ——.

Covenant by tenant for life for payment of interest accruing during his life.

5. The tenant for life doth hereby covenant with the mortgagee that he will at all times during his life, if the aforesaid sum of £5,000 or any part thereof shall so long remain due on the security of these presents, pay to the mortgagee, the interest for the said sum of £5,000, or for so much thereof as shall for the time being remain unpaid, at the rate and at the times aforesaid.

Trustees not to be personally liable.

6. The said sum of £5,000 hereby secured, and the interest for the same, shall not nor shall any part thereof respectively constitute a debt of the term trustees, or either of them, or be recoverable from them or either of them personally. IN WITNESS, &c.

SCHEDULE—*Description of hereditaments.*

XXIII.

PRECEDENT XXIII.

BY PERSONAL REPRESENTATIVES UNDER ADMINISTRATION OF ESTATES ACT, 1925.

MORTGAGE *of* FREEHOLDS *by the* PERSONAL REPRESENTATIVES *of a* DECEASED PERSON (*r*).

THIS MORTGAGE, made, &c., BETWEEN A., of, &c., and B., of, &c. (herein called "the executors"), of the one part, and C., of, &c. [*mortgagee*] (herein called "the mortgagee"), of the other part. WHEREAS D., late of ——, deceased, by his Will,

Recitals: —of Will:

(*r*) The power of an executor or administrator to mortgage the assets is now beyond question, so long, at least, as his powers of administration of the estate continue and his office as personal representative has not become

PRECEDENT XXIII.

BY PERSONAL REPRESENTATIVES UNDER ADMINISTRATION OF ESTATES ACT, 1925.

dated the —— day of ——, (among other things) appointed the executors to be the executors thereof, and died on the —— day of —— [*after* 1925], and his said Will was proved by the executors on the —— day of —— in the —— Registry : AND WHEREAS the said D. was at his death seised of the hereditaments hereinafter described for an estate of inheritance in fee simple in possession, free from incumbrances : AND WHEREAS the mortgagee has agreed to lend to the executors the sum of £—— for the purposes of the estate of the said D. upon having the repayment thereof with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid by the mortgagee to the executors (the receipt whereof the executors do hereby acknowledge),

—of death and probate;

—of seisin :

—of agreement for loan.

1. The executors AS PERSONAL REPRESENTATIVES of the said D., deceased, do hereby demise unto the mortgagee, ALL THOSE, &c. [*parcels by reference to Schedule*], TO HOLD unto the mortgagee [*as in Precedent IV.*].

2. PROVIDED that if the executors, or any other persons or person entitled to redeem the security, shall on the —— day of —— next pay to the mortgagee the sum of £—— with interest thereon in the meantime at the rate of —— per cent. per annum, then the mortgagee will at any time thereafter [*continue as in Precedent IV., substituting* " the executors " *for* " the owner "].

Proviso for redemption.

3. PROVIDED also that if the said sum of £—— or any part thereof shall remain unpaid after the said —— day of —— next then so long as the same sum or any part thereof shall remain unpaid interest at the rate aforesaid on such unpaid sum shall be paid to the mortgagee by equal half-yearly payments on the —— day of —— and the —— day of —— in every year. BUT the said sum of £—— hereby secured and the interest thereon shall not nor shall any part thereof constitute a debt from the executors or be recoverable from them or either of them personally. [*Add other covenants, &c., as required: see Precedent IV.*] (*s*).

Interest to be paid half-yearly but executors not to be personally liable.

4. Where appropriate the expression " the executors " includes the survivor of them and other the personal representatives or representative for the time being of the said D., their

Interpretation clause.

converted into that of a mere trustee : see *Attenborough* v. *Solomon*, [1913] A. C. 76. See also A. E. Act, 1925, sects. 1—3.

(*s*) As to the effect of a covenant by a person " as trustee and not so as to create any personal liability," see *Watling* v. *Lewis*, [1911] 1 Ch. 414; *Re Robinson*, [1912] 1 Ch. 717. In a mortgage of this character, a covenant for payment would seldom be entered into.

PRECEDENT XXIII.

BY PERSONAL REPRESENTATIVES UNDER ADMINISTRATION OF ESTATES ACT, 1925.

and his assigns, and the expression "the mortgagee" includes persons deriving title under him. IN WITNESS, &c.

SCHEDULE—*Description of hereditaments.*

XXIV.

DEED *of* FURTHER CHARGE *by* INDORSEMENT (*t*).

PRECEDENT XXIV.

FURTHER CHARGE BY INDORSEMENT.

THIS FURTHER CHARGE, made, &c., BETWEEN the within named A. (herein called "the owner"), of the one part, and the within named B., C., and D. (herein called "the mortgagees"), of the other part. WHEREAS the within mentioned sum of £——, with interest thereon from the —— day of —— last, is owing on the security of the within written mortgage.

Recital that mortgage debt remains owing with some interest.

AND WHEREAS the mortgagees have agreed to lend to the owner the further sum of £——, on having the repayment thereof with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing.

Agreement for further advance.

NOW THIS DEED WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— this day paid to the owner by the mortgagees, out of money belonging to them on a joint account (the receipt whereof the owner doth hereby acknowledge).

Covenant by mortgagor for payment of further advance, and interest.

1. The owner Doth hereby covenant with the mortgagees, that the owner will, on the —— day of —— next (*u*), pay to the mortgagees the sum of £—— [*further advance*], with interest thereon in the meantime at the rate of —— per cent per annum, AND if the same sum or any part thereof shall remain unpaid after the said —— day of —— next, will thenceforth pay to the mortgagees interest on such unpaid sum at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— (*x*).

Mortgaged premises to be charged with further advance and interest;

2. All the hereditaments and premises comprised in the within written mortgage shall be charged with the payment, and shall not be redeemable but upon payment, by the owner to the mortgagees, of as well the said sum of £—— [*further advance*] and interest thereon according to the covenant hereinbefore contained, as the within mentioned sum of £—— [*original debt*] and the interest due and to become due thereon.

(*t*) For a further charge by way of legal mortgage, see Precedent XXXVI.

(*u*) If the further advance be made in the interval between the half-yearly days appointed by the mortgage deed for the payment of interest, the day named here should be the half-yearly day next following the date of the advance.

(*x*) The half-yearly days of payment of interest under the original mortgage.

PRECEDENT XXIV.

FURTHER CHARGE BY INDORSEMENT.

3. All powers and provisions in the within written mortgage contained, or by law implied, for securing or obtaining the payment of the principal money and interest thereby secured, shall extend and be applicable so as to be a further security for the said sum of £—— [*further advance*] and interest, as if the said sum had formed part of the principal money secured by the within written mortgage (*y*).

Powers of the mortgage deed to be applicable to further advance.

4. The expressions "the owner," and "the mortgagees," shall have the same meanings as in the within written mortgage (*z*). IN WITNESS, &c.

Interpretation clause.

XXV.

MORTGAGE *to a* BUILDING SOCIETY *of* FREEHOLDS *and* LEASEHOLDS (*a*).

PRECEDENT XXV.

TO A BUILDING SOCIETY.

THIS MORTGAGE (*b*), made, &c., BETWEEN A., of, &c. (herein called "the owner," which expression, where appropriate, includes persons entitled to redeem this security), who is a member of the —— Building Society, incorporated under the Building Societies Act, 1874, of the one part, and the said —— Building Society (herein called "the Society," which expression, where appropriate, includes persons deriving title under the

(*y*) This clause may be omitted where there are no special powers and provisions.

(*z*) It is assumed here that the mortgage so defines the mortgagor and mortgagees, but this clause will, of course, be framed so as to correspond with the expressions actually used in the mortgage.

(*a*) The Building Societies Act, 1836, by which benefit building societies were formerly regulated, was repealed by the Building Societies Act, 1874, which is amended by the Building Societies Acts, 1875, 1877, 1884, and 1894; but such repeal does not affect any benefit building society previously certified under the repealed Act, until such society obtains a certificate of incorporation under the Act of 1874. A building society, upon receiving a certificate of incorporation under the Act of 1874, becomes (sects. 9 and 13) a body corporate, having a common seal, and having power to hold land by way of mortgage. Hence mortgages to building societies, under the Building Societies Act, 1874, differ from mortgages to benefit building societies under the repealed Act, by being taken in the name of the society, not in the names of trustees. As to the power of a building society to transfer its mortgages, see *Re Rumney and Smith*, [1897] 2 Ch. 351; *Sun Bldg. Socy.* v. *Western, &c., Socy.*, [1920] 2 Ch. 144, and [1921] 2 Ch. 438. As to a charge on registered land, see L. R. Act, 1925, sect. 25 (1) (b). As to the discharge by statutory receipt of a building society mortgage or charge by way of legal mortgage, see Building Societies Act, 1874, sect. 42 and Schedule, and as to the operation of such a receipt, see L. P. Act, 1925, sect. 115, sub-sect. (9). As to mortgages to building societies generally, see Dav. Prec. Conv., Vol. II., Pt. II., 4th ed., pp. 703, &c., and Wurtzburg on Building Societies (1920).

(*b*) This form may be adapted to a charge by way of legal mortgage. Compare Precedents I. and II. and Precedent XXXV.

PRECEDENT XXV.

TO A BUILDING SOCIETY.

Society), of the other part, WITNESSETH, that in consideration of the sum of £—— paid by the Society to the owner, being the amount to which he is entitled in respect of —— shares held by him in the funds of the Society (the receipt whereof he doth hereby acknowledge) :—

Covenant to pay subscriptions.

1. The owner Doth hereby covenant with the Society, that the owner will punctually pay to the Society all subscriptions and other money (*c*) which, according to the rules for the time being (*d*) of the Society, shall from time to time become payable in respect of the said —— shares, or of the advance hereby made.

Demise of freeholds.

2. The owner, AS BENEFICIAL OWNER, Doth hereby demise unto the Society, ALL the hereditaments described in the First Schedule hereto, TO HOLD unto the Society for a term of 3,000 years from the date hereof without impeachment of waste, subject to the proviso for redemption as hereinafter contained.

Demise of leaseholds.

3. The owner, as BENEFICIAL OWNER, Doth hereby demise unto the Society ALL the hereditaments specified in the Second Schedule hereto, being the hereditaments demised by the Lease (herein called "the lease") mentioned in the said Schedule, To HOLD unto the Society for the residue of the term of —— years granted by the lease except the last —— days thereof, subject to the proviso for redemption hereinafter contained.

4. PROVIDED, that if the owner shall pay to the Society all money payable under the rules of the Society for the time being in force, the Society will at any time hereafter either execute a receipt in the manner prescribed by the Building Societies Act, 1874 (but operating as provided by the L. P. Act, 1925), or surrender to the owner the term and the sub-term hereby respectively created, or as the owner shall direct (*e*).

Power for Society to enter into possession;

—appoint receiver;

5. The Society may at any time hereafter, without any consent of the owner, enter into possession or receipt of the rents of the several mortgaged premises, or of any part thereof; and may, at the cost and sole risk of the owner, appoint a person to collect and receive such rents, on behalf of the Society, at such commission as the Society shall think fit, and may exercise the power of sale by law implied without giving notice to the owner.

(*c*) *I.e.*, due from him as a member. See *Bailes* v. *Sunderland, &c. Society* (1886) W. N. 191; and also *Neath Building Society* v. *Luce* (1889) 43 Ch. D. 158.

(*d*) See *Rosenberg* v. *Northumberland Building Society* (1889) 22 Q. B. D. 373; *Bradbury* v. *Wild*, [1893] 1 Ch. 377. See also covenant to observe rules at end of this Precedent.

(*e*) If the leaseholds mortgaged do not comprise the whole of the land comprised in the lease and there has been no legal apportionment, here add (1) a trust by the owner of the nominal reversion; (2) a power for the society to appoint new trustees; and (3) an appointment of the society as attorney for the owner: see L. P. Act, 1925, sect. 89 (6), and Precedent V., note (*z*).

PRECEDENT XXV.

TO A BUILDING SOCIETY.

PROVIDED, that the Society shall not execute the powers of entering into possession or of leasing, sale or appointment of a receiver by law implied (as hereby varied) or hereinbefore contained, unless and until default shall have been made for —— monthly (*f*) meetings of the Society, in the payment of some subscription or other money which shall have become payable in respect of the said —— shares according to the rules of the Society, or in the observance or performance of some of the said rules, or of the covenants respectively herein contained, and by law implied [or unless and until such default shall have been made, as specified in No. —— of the present registered rules of the Society, or in any rule hereafter to be substituted for such rule, in or about the completion of the now unfinished buildings on the said premises (*g*)], or unless and until the owner shall have been adjudged bankrupt, or shall have executed an assignment of his estate for the benefit of his creditors.

Society not to exercise powers till subscriptions in arrear;

or default in completing buildings;

or mortgagor bankrupt.

6. The receipt of the Society for any money paid to them by virtue of these presents, shall effectually discharge the person or persons paying the same therefrom, and from being concerned to see to the application thereof.

Society's receipts to be discharges.

7. The Society shall, out of the money which shall arise from any exercise of the said powers, in the first place discharge all the expenses incurred in or about the collection or receipt thereof, or otherwise in respect of the premises; and in the next place apply such money in or towards satisfaction of the money owing according to the aforesaid rules, in respect of the said shares, or otherwise due under this mortgage, and in case of a sale, under the power by law implied as hereby varied, all money which would at any time afterwards become due in respect of the said shares according to the rules of the Society, shall be deemed to be money due under this mortgage, and shall pay the surplus (if any), to the owner.

Trusts of money received under powers.

8. The Society may, without the consent of the owner, at any time after the power of sale has become exercisable, transfer all money owing under this security and assign the term and subterm hereby created, subject to redemption, to any individual or corporation or society (herein called "the transferee"), and such money shall be deemed to be principal money due to the

Power to transfer (*gg*).

(*f*) The wording of this clause must depend on the rules of the society, and the requirements therein as to repayment of loans, &c. It is assumed in the text that the meetings of the society are monthly, and that the payments by members are to be made at such meetings.

(*g*) The clause in brackets will be omitted if there are no buildings in course of erection on the mortgaged property. It is assumed here and below that the rules of the society make provision for completion of buildings and insurance of mortgaged property.

(*gg*) See p. 387, note (*a*).

PRECEDENT XXV.

TO A BUILDING SOCIETY.

transferee on demand, and shall carry interest at the rate of —— per cent. per annum from the date of such transfer, such interest to be payable half-yearly, as if the owner had covenanted to pay the same to the transferee, and the rules and provisions of the Society (party to these presents) had ceased to be applicable thereto.

Clause incorporating rules.

9. Nos. ——, ——, and ——, of the present registered rules of the Society, or any rules hereafter to be substituted for the same rules respectively, having reference [to the completion of unfinished buildings, and] to insurance from loss or damage by fire or otherwise, or such of the same rules respectively as, regard being had to the nature and intent thereof, are capable of applying to this transaction, shall apply thereto as if here inserted (with necessary variations), and the other rules for the time being of the Society, so far as capable of applying to this transaction, and except so far as hereby expressly varied, or as inconsistent with any of the provisions of these presents, shall also (though not expressly herein referred to) apply to this transaction.

Covenants by mortgagor; to observe rules.

10. The owner Doth hereby covenant with the Society, that the owner will, during the continuance of the security, observe and perform all the rules for the time being of the Society relating to or affecting the premises herein comprised (*h*). [*Add other provisions as required, see Precedent IV., and other Precedents.*] IN WITNESS, &c. (*i*).

FIRST SCHEDULE—*Freeholds.*

SECOND SCHEDULE—*Leaseholds.*

(*h*) As to the effect of such a covenant (apart from express reservation of the right) in preserving the right to consolidate where the rules contemplate the existence of such a right, see *Andrews* v. *City, &c. Society* (1881), 44 L. T. 641; *Hughes* v. *Britannia, &c. Society*, [1906] 2 Ch. 607. The rights of the mortgagor are subject to future alterations in the rules: see *Bradbury* v. *Wild*, [1893] 1 Ch. 377.

(*i*) The following is a clause intended to enable the society (or other mortgagees) to enter and manage the mortgaged property without incurring the responsibilities incident to possession, and applicable to a building estate:—

Power for mortgagees to enter and manage and develop the mortgaged estate:

"PROVIDED that it shall be lawful for the Society or for any receiver appointed under the statutory power in that behalf, at any time or times after they shall have become entitled to exercise the power of sale by law implied [as herein varied], and until all the premises shall have been sold, to enter into possession of the premises or of the unsold parts thereof for the time being, and from time to time to relinquish and resume possession, and while in possession to manage or superintend the management of the premises and all buildings now or hereafter to be erected

XXVI.

SUBMORTGAGE *of a* MORTGAGE *of* FREEHOLDS (*k*).

PRECEDENT XXVI. — SUB-MORTGAGE.

THIS SUBMORTGAGE, made, &c., BETWEEN A., of, &c. (herein called "the submortgagor," which expression, where appropriate, includes persons entitled to redeem this security), of the one part, and B., of, &c. (herein called "the sub-mortgagee,"

Recital of mortgage:

---

thereon, and to develop the same upon the plan or scheme upon which the same are or shall be managed and developed by the owner, or upon any other plan or scheme which the Society shall think fit, and to let or demise for any term or terms, or from year to year, or otherwise dispose of all or any part or parts of the premises either for building or for other purposes, and to appropriate and lay out any part of the premises for squares, gardens, or other open spaces, roads, and other works, which may tend to the adaptation and development of the premises or any part thereof as a building estate, and to repair and complete houses and other buildings, and to insure houses, buildings, and other property against loss or damage by fire or otherwise, and to make allowances to and arrangements with all or any of the tenants or occupiers for the time being of the premises and with other persons, and to accept surrenders of leases and tenancies, and generally to deal with the premises as fully and effectually as an absolute owner could do, and also to demand, sue for, collect and receive, and give effectual discharges for all the rents and profits due at the time this power shall be exercised, or which shall become due in respect of the premises. AND in case of non-payment thereof or of any part thereof to enter into and upon all or any of the hereditaments in respect of which any rents or profits shall be unpaid, and for the same rents and profits and the costs and expenses incurred by or incidental to the non-payment thereof to distrain, and the distress and distresses there found to dispose of in due course of law, and to take and use all lawful proceedings and means for recovering and receiving the said rents and profits, and for evicting and ejecting defaulting tenants and occupiers from all or any of the said premises, and determining the tenancy and occupation thereof, and for obtaining, recovering, and retaining possession of all or any of the premises held by such defaulters, and also to commence and prosecute and to defend all actions, claims, demands, and proceedings touching the same premises which may

—and to distrain for rent, evict and take proceedings generally;

(*k*) See note (*k*), p. 392.

PRECEDENT XXVI.

SUB-MORTGAGE.

which expression, where appropriate, includes persons deriving title under him), of the other part. WHEREAS, by a Mortgage (herein called "the original mortgage") dated, &c. [*before* 1926], and made between C. (herein called "the original mortgagor"), of the one part, and the submortgagor, of the other part, the original mortgagor conveyed to the submortgagor in fee simple certain hereditaments situate at ——, and therein particularly described, subject to redemption on payment by the original mortgagor to the submortgagor of the sum of £1,000 with interest thereon at the rate and time therein mentioned.

—of term vested in sub-mortgagor.

AND WHEREAS, by virtue of the Law of Property Act, 1925, the said hereditaments are now vested in the submortgagor for a term of 3,000 years from the date of the mortgage without impeachment of waste, but subject to a provision for cesser

---

arise in any way in consequence of the exercise of this present power, and for all or any of the aforesaid purposes to execute and do all such instruments and things as shall to the Society or the said receiver seem necessary or expedient, and for the purposes aforesaid to employ all such agents, managers, and others as shall be thought necessary or expedient, and to pay them such salaries, wages, and other remuneration as shall be just and reasonable.

—without incurring the responsibilities incident to possession.

AND the Society shall not be chargeable as mortgagees in possession, whether in respect of any act or acts done or purported to be done in exercise of the aforesaid powers or any of them or otherwise, or for any rents or profits of the said premises except such as the Society shall actually receive, nor for any act, omission, or default of the society, or any such receiver, agent, or manager, as aforesaid, but all such losses shall be wholly borne by the owner, and all money (if any) which the Society or such receiver shall advance or expend in the execution of the aforesaid powers or any of them (and which money the Society are respectively hereby authorised to advance or expend at their discretion) together with interest on such money at the rate of 5 per cent. per annum from the time of the same respectively having been advanced, shall be a charge upon the mortgaged premises."

(*k*) As to submortgages, see Dav. Prec. Conv., Vol. II., Pt. II., 4th ed., pp. 138—141. See also sect. 88, sub-sect. (5) and sect. 89, sub-sect. (5) of the L. P. Act, 1925 (set out above under General Remarks), as to the realisation of submortgages of freeholds and leaseholds. As to the conversion of existing submortgages of freeholds and leaseholds, see sect. 4 of Part VII. and sect. 4 of Part VIII. of the First Schedule to that Act. This Precedent is of a submortgage made after 1925 of a mortgage made before 1926, so that the original mortgage fee simple has become converted into a long term.

If this submortgage is effected by a charge by way of legal mortgage the demise and proviso for redemption will be omitted, see Precedent I.

corresponding to the right of redemption which on the 1st day of January, 1926, was subsisting with respect to the fee simple. AND WHEREAS the said sum of £1,000, with interest from the —— day of —— last, is now owing on the security of the original mortgage. AND WHEREAS the submortgagee has agreed to lend the submortgagor the sum of £500 upon having the repayment thereof with interest, as hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £500 paid by the submortgagee to the submortgagor (the receipt whereof the submortgagor doth hereby acknowledge) :—

that principal and interest are now owing :

of agreement for loan.

1. The submortgagor Doth hereby covenant with the submortgagee [*continue covenant to pay principal of* £500 *and interest as in Precedent I., with necessary variations*].

2. The submortgagor, AS BENEFICIAL OWNER, Doth hereby assign unto the submortgagee, ALL THAT the said sum of £1,000 now owing to the submortgagor on the original mortgage, and all interest due and to accrue due, and the benefit of all powers and securities for the same (*l*), TO HOLD unto the submortgagee, subject to the proviso for redemption hereinafter contained.

Transfer of mortgage debt.

Habendum.

3. The submortgagor, AS BENEFICIAL OWNER (*m*), Doth hereby demise unto the submortgagee ALL the hereditaments comprised in the mortgage, TO HOLD unto the submortgagee for the residue of the said term of 3,000 years, except the last day thereof, but not so as to affect the right of redemption subsisting therein under the mortgage and to the proviso for redemption hereinafter contained.

Demise of mortgage term.

4. PROVIDED that, if the submortgagor shall pay unto the submortgagee the said sum of £500 with interest for the same in the meantime, at the rate of —— per cent. per annum on the —— day of —— next, then the submortgagee will at any time thereafter, at the request and cost of the submortgagor,

Proviso for redemption.

(*l*) The direct right of action of the *absolute* assignee of a debt, of which assignment express notice in writing has been given to the debtor, which is conferred by sect. 136 of the L. P. Act, 1925 (replacing sect. 25, sub-sect. (6) of the Judicature Act, 1873), renders a power of attorney useless in such assignments, even of a mortgage debt subject to redemption, as in a sub-mortgage, provided that the whole debt is assigned (*Tancred* v. *Delagoa, &c. Co.* [1889] 23 Q. B. D. 239; *Durham Bros.* v. *Robertson*, [1898] 1 Q. B. 765; *Hughes* v. *Pump House Hotel Co.*, [1902] 2 K. B. 190. But if only part of the debt is assigned, it is a question whether the statutory provision applies : see *Skipper* v. *Holloway*, [1910] 2 K. B. 630; *Forster* v. *Baker*, *ib.* 636; *Conlan* v. *Carlow C.C.*, [1912] 2 I. R. 536; *Rothschild* v. *Fisher*, [1920] 2 K. B. 243; *Re Steel Wing Co.*, [1921] 1 Ch. 349.

(*m*) It is thought that the submortgagee is entitled to require the submortgagor to demise "as beneficial owner" (see L. P. Act, 1925, sect. 76, sub-sect. (1) (c), set out under General Remarks in CONVEYANCES). Compare the express covenant in Dav. Prec. Conv. (1881) 4th ed., Vol. II., Pt. II., p. 729.

PRECEDENT XXVI. SUB-MORTGAGE.

either execute a receipt in the manner prescribed by the Law of Property Act, 1925, or re-assign the mortgage debt and interest and surrender the sub-term hereby created to the submortgagor, or as the submortgagor shall direct, but not so as to affect the right of redemption under the original mortgage.

Submortgagee not to be bound to enforce original security.

5. The submortgagee shall not be bound to enforce or realise the security created by the original mortgage unless he think fit, nor be answerable for any loss occasioned by delay or omission so to do, or otherwise, in relation to such security, nor shall this present security be prejudiced or affected by such delay or omission. IN WITNESS, &c. (*n*).

XXVII.

PRECEDENT XXVII. TRANSFER BY INDEPENDENT DEED.

TRANSFER *of a* MORTGAGE *of* FREEHOLDS *by* SUPPLEMENTAL DEED, *the* MORTGAGOR *not being a* PARTY (*o*).

THIS TRANSFER OF MORTGAGE, made, &c., BETWEEN A., of, &c. [*mortgagee*] (herein called "the transferor"), of the one part, and B., of, &c. [*transferee*] (herein called "the transferee"), of the other part. WHEREAS these presents are supplemental to a Mortgage (herein called "the mortgage") dated, &c. [*after* 1925], and made between C., of the one part, and the transferor, of the other part, whereby certain freehold hereditaments situate at ——, in the County of ——, and therein described, were demised to the transferor for a term of 3,000 years from the date thereof, without impeachment of waste, by way of mortgage for securing payment of the sum of £—— with interest thereon at the rate of —— per cent. per annum. AND WHEREAS the said sum of £——, with £—— for interest thereon from the —— day of —— last, is now owing to the transferor under the mortgage. AND WHEREAS the transferee has agreed to pay to the transferor the said sums of £—— and £——, making together the sum of £——, upon having such transfer of the said mortgage debt and interest and of the securities for the same, as is hereinafter contained. NOW THIS DEED WIT-

Recital of mortgage;

—that principal and certain interest is now owing;

—of agreement for transfer.

(*n*) Notice of this submortgage should be given to the original mortgagor to prevent the submortgagee from being prejudiced by any dealings between the original mortgagor and the submortgagor. See Dav. Prec. Conv., Vol. II., Pt. II., 4th ed., p. 138; *De Lisle* v. *Union Bank of Scotland*, [1914] 1 Ch. 22.

(*o*) As to the rights of a transferee, see sect. 114 of the L. P. Act, 1925 (set out under General Remarks above), and for forms of statutory examples of transfers and of statutory transfers, see Precedents XXXVII., XL., XLI. and XLII.

NESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— paid by the transferee to the transferor (the receipt whereof the transferor doth hereby acknowledge) :—

PRECEDENT XXVII.

TRANSFER BY INDEPENDENT DEED.

1. The transferor, AS MORTGAGEE, Doth hereby assign unto the transferee ALL THAT the said sum of —— [*principal*] now owing to the transferor on the security aforesaid, and all interest due and to accrue due for the same, AND the benefit of all securities for the same, TO HOLD unto the transferee absolutely.

Assignment of debt:

2. The transferor, AS MORTGAGEE, Doth hereby assign unto the transferee, ALL the said hereditaments and premises comprised in and demised by the mortgage, TO HOLD unto the transferee for the residue of the said term of 3,000 years, SUBJECT to the right of redemption subsisting therein under the mortgage. IN WITNESS, &c. (*p*).

—of mortgaged property.

XXVIII.

TRANSFER *by* INDORSEMENT *of a* MORTGAGE *of* FREEHOLDS UPON *an* APPOINTMENT *of* NEW TRUSTEES, *the* MORTGAGOR *not being a* PARTY (*q*).

PRECEDENT XXVIII.

TRANSFER BY INDORSEMENT ON APPOINTMENT OF NEW TRUSTEES.

THIS TRANSFER OF MORTGAGE, made, &c., BETWEEN the within-named A. and B. [*surviving mortgagees*] (herein called "the transferors"), of the one part, and D., of, &c., E., of, &c., and F., of, &c. [*transferees*] (herein called "the transferees"), of the other part. WHEREAS the within-named G. died on the —— day of ——, ——. AND WHEREAS the within-mentioned sum of £——, together with the interest thereon from the —— day of —— last, is now owing to the transferors on the security of the within-written Deed, and the same now belongs in equity to the transferees, on a joint account, and the transferors have agreed to execute such transfer of the said mortgage debt, and interest, and the securities for the same, as is hereinafter contained (*r*). NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises :

Recital of death of one mortgagee;

that mortgage debt with interest remains owing,

and belongs to transferees;

and of agreement for transfer.

(*p*) Notice of this transfer should be given to the mortgagor : see note (*n*) to Precedent XXVI., p. 394.

(*q*) The mortgage which is transferred is here assumed to have been made after 1925. For a form where it was made before 1926, see next Precedent. As to the form of a transfer of a charge by way of legal mortgage, see note to Precedent XXXVII.

(*r*) This form of recital is appropriate when it is desired not to disclose the nature of the title to the mortgage money, *e.g.*, when a mortgage on which trust money has been invested is transferred on an appointment of new

PRECEDENT XXVIII.

TRANSFER BY INDORSEMENT ON APPOINTMENT OF NEW TRUSTEES.

1. The transferors, AS MORTGAGEES, Do hereby assign unto the transferees, ALL THAT principal sum of £—— now owing on the security of the within-written Deed, and all interest due, and to grow due thereon, AND the benefit of all securities for the same, TO HOLD unto the transferees absolutely.

Assignment of debt.

2. The transferors, AS MORTGAGEES, Do hereby assign unto the transferees, ALL the hereditaments comprised in, and demised by the within-written Deed : TO HOLD unto the transferees, for the residue of the term granted by the within-written Deed, SUBJECT to the right of redemption subsisting therein under the within-written Deed. IN WITNESS, &c. (*s*).

Assignment of mortgaged land.

Habendum.

To transferees;

subject to subsisting right of redemption.

XXIX.

PRECEDENT XXIX.

ON MARRIAGE, TRANSFER OF MORTGAGE TO BE SETTLED

TRANSFER *to* TRUSTEES *of* MORTGAGE DEBT *and* SECURITIES, *in contemplation of* MARRIAGE, *and upon trusts to be declared by a* SETTLEMENT *of* EVEN DATE (*t*).

THIS TRANSFER OF MORTGAGE, made, &c., BETWEEN A., of, &c. [*intended husband*] (herein called "the husband"), of the first part, B., of, &c. [*intended wife*] (herein called "the wife"), of the second part, and C., of, &c., D., of, &c., and E., of, &c. (herein called "the trustees"), of the third part. WHEREAS, by a Mortgage (herein called "the mortgage"), dated, &c. [*before* 1926], and made between X. [*the mortgagor*], of the one part, and the husband, of the other part, in consideration of the sum of £——, paid by the husband to the said X., divers hereditaments, situate in the Parish of ——, in the County of ——, known as the —— Estate, therein described were conveyed to the husband, in fee simple by way of mortgage for securing payment to the husband of the sum of £——, with interest thereon at the rate of —— per cent. per annum. AND WHEREAS by virtue of the Law of Property Act, 1925, the hereditaments com-

Recital of mortgage.

Effect of Law of Property Act, 1922;

---

trustees. See *Re Harman and Uxbridge, &c. Ry. Co.* (1883), 24 Ch. D. 720; *Carritt* v. *Real, &c. Advance Co.* (1889), 42 Ch. D. 263, in which it seems to have been assumed that such recitals are of ordinary occurrence in documents not connected with mortgages. And cf. *Re Blaiberg and Abrahams*, [1899] 2 Ch. 340, and *Re Chafer and Randall*, [1916] 2 Ch. 8, where the trusts were disclosed. The fact that the transfer only bears a ten shillings stamp, although the stamp duty, if payable according to the amount of the debt transferred, would exceed ten shillings, does not of itself give notice to a purchaser of any trust : see L. P. Act, 1925, sect. 112, replacing C. Act, 1911, sect. 13. See *Re Soden and Alexander*, [1918] 2 Ch. 258.

(*s*) Notice of this transfer should be given to the mortgagor.

(*t*) Sometimes the transfer is made after the settlement.

PRECEDENT XXIX.

ON MARRIAGE, TRANSFER OF MORTGAGE TO BE SETTLED

prised in the mortgage are now vested in the husband for a term of 3,000 years from the 1st day of January, 1926, without impeachment of waste, but subject to a provision for cesser corresponding to the right of redemption which was then subsisting with respect to the fe simple. AND WHEREAS the said sum of £——, with interest thereon from the —— day of —— last, is owing to the husband on the security of the mortgage. AND WHEREAS a marriage is intended to be solemnised between the husband and the wife, and on the treaty for the said marriage it has been agreed that the said sum of £—— and interest, with all securities therefor, should be transferred to the trustees upon the trusts hereinafter referred to. NOW THIS DEED WITNESSETH that in pursuance of the said agreement, and in consideration of the said intended marriage :—

—state of mortgage debt;

—intended marriage, and agreement to transfer.

1. The husband, AS MORTGAGEE, and with the approbation of the wife, Doth hereby assign unto the trustees, ALL THAT the principal sum of £—— now owing to the husband, on the security of the mortgage, and all interest due and to become due thereon, AND the benefit of all securities for the same, TO HOLD unto the trustees absolutely, IN TRUST for the husband, until the said intended marriage, AND AFTER the solemnisation thereof, UPON SUCH TRUSTS as are declared concerning the same respectively, by a Deed already engrossed and intended to bear even date with these presents, and to be made between the same persons as are parties thereto and in the same order [*or if the case be otherwise* "between, &c.," *naming parties*] and to be executed immediately after these presents.

Assignment.

Of mortgage debt and interest.

To trustees in trust for assignor till marriage.

And after on trusts declared by deed of even date.

2. The husband, AS MORTGAGEE, Doth hereby assign unto the trustees, ALL the hereditaments comprised in the mortgage, or which now by any means are vested in the husband, subject to redemption, TO HOLD UNTO the trustees for the residue of the said term of 3,000 years, SUBJECT to a provision for a cesser corresponding to the right of redemption subsisting therein under the mortgage on payment to the trustees, or the survivors or survivor of them or the personal representatives of such survivor, their or his assigns, of the said sum of £——, and the interest due and to grow due thereon.

Assignment of mortgaged hereditaments to trustees for residue of term of 3,000 years.

3. The persons hereby nominated for the purpose of appointing any new trustees of these presents shall be the husband and the wife during their joint lives, and the survivor during his or her life. IN WITNESS, &C. (*u*).

Power to appoint new trustees

(*u*) Notice of the transfer should be given to the mortgagor.

XXX.

PRECEDENT XXX.

TRANSFER BY INDEPENDENT DEED ON APPOINTMENT OF NEW TRUSTEE.

TRANSFER *of a* MORTGAGE *of* FREEHOLDS *by* INDEPENDENT DEED, *by one* CONTINUING *and one* RETIRING TRUSTEE *to the* CONTINUING *and* NEW TRUSTEES.

THIS TRANSFER OF MORTGAGE, made the —— day of ——, BETWEEN A., of, &c. [*continuing trustee*], and B., of, &c. [*retiring trustee*], of the one part, and the said A., C., of, &c., and D., of, &c. [*continuing and new trustees*], of the other part.

Recital of mortgage.

WHEREAS, by a Mortgage (herein called "the mortgage"), dated, &c. [*before* 1926], and made between [*mortgagor*] of the one part, and A., B., and E. [*mortgagees*], of the other part, in consideration of the sum of £—— to the said [*mortgagor*] paid by the said A., B., and E., out of money belonging to them on a joint account, the said [*mortgagor*] conveyed certain hereditaments situate at —— and therein particularly described to the said A., B., and E., in fee simple subject to redemption on payment by the said [*mortgagor*], to the said A., B., and E., of the sum of £——, on the —— day of ——, with interest thereon in the meantime at the rate of —— per cent. per annum. AND WHEREAS by virtue of the Law of Property Act, 1925, the said hereditaments had, on the 1st day of January, 1926, become vested in the said A., B., and E., for a term of 3,000 years from the date of the mortgage, without impeachment of waste, but subject to a provision for cesser corresponding to the right of redemption then subsisting with respect to the fee simple.

Of death of one mortgagee.

AND WHEREAS the said E. died on the —— day of —— [*after 1st January*, 1926.]

That principal and interest belong in equity to the transferees.

AND WHEREAS the said principal sum of £——, with current interest thereon, remains owing on the security of the mortgage, but the same now belongs to the said A., C., and D., upon a joint account.

NOW THIS DEED WITNESSETH, that in consideration of the premises :—

Assignment of mortgage debt, &c., to old and new trustees.

1. The said A. and B. AS MORTGAGEES Do hereby assign unto the said A., C., and D., ALL THAT the said principal sum of £——, so owing to the said A. and B. on the security of the mortgage as aforesaid, and all interest due and to grow due thereon, AND the benefit of all securities for the same respectively, TO HOLD unto the said A., C., and D., absolutely.

Assignment of the mortgaged premises. To the old and new trustees. Subject to subsisting equity of redemption.

2. The said A. and B. AS MORTGAGEES Do hereby assign unto the said A., C., and D., ALL the hereditaments comprised in the mortgage, TO HOLD unto the said A., C., and D., for the residue of the said term of 3,000 years, SUBJECT to such right of redemption as the same premises are now subject to by virtue of the mortgage. IN WITNESS, &c.

XXXI.

TRANSFER (*by* INDEPENDENT *or* SUPPLEMENTAL DEED) *of a* MORTGAGE *of* FREEHOLDS, *the* EQUITY *of* REDEMPTION *having been* INCUMBERED, *and the* OWNER *being a* PARTY *and* COVENANTING *for* PAYMENT *of the* MORTGAGE DEBT *and* INTEREST (*x*).

PRECEDENT XXXI.

TRANSFER WITH COVENANT FOR PAYMENT BY MORTGAGOR.

THIS TRANSFER OF MORTGAGE, made, &c., BETWEEN A., of &c. [*mortgagee*] (herein called "the transferor"), of the first part, B., of, &c. [*owner of equity of redemption*] (herein called "the owner," which expression, where appropriate, includes persons entitled to redeem this security), of the second part, and D., of, &c., and E., of, &c. [*transferees*] (herein called "the transferees"), of the third part. WHEREAS by a Mortgage (herein called "the mortgage"), dated the —— day of —— (*y*), and made between M. [*original mortgagor*], of the one part, and N. [*original mortgagee*], of the other part, the said M. conveyed the several messuages, farms, lands, tenements, and hereditaments, commonly called the —— Estate, situate in the Parish of ——, in the County of ——, and containing together by estimation ——, all which premises were more particularly described in the Schedule thereunto annexed, unto and to the use of the said N. in fee simple, subject to a proviso for redemption on payment by the said M. to the said N. of the sum of £——, with interest at the rate of —— per cent. per annum, on the day therein mentioned. AND WHEREAS [after a mesne transfer [divers mesne transfers and acts in the law] and ultimately], by virtue of a Transfer of Mortgage dated, &c., and made between [*parties*], the said mortgage debt of £—— and the interest thereon, and the securities for the same (*z*) were

Recital of mortgage;

—of transfers;

(*x*) There is no substantial reason why the present form should not be adopted, where the equity of redemption has not been incumbered, but in that case it is more usual to frame the transfer as in the next Precedent.

(*y*) The original mortgage and subsequent dealings up to the date of this transfer are assumed to have been made before 1926.

(*z*) Add if appropriate "other than and except certain hereditaments which had been released and disposed of as in the said transfer mentioned." If the deed be supplemental, substitute for the preceding recitals the following:—

"WHEREAS these presents are supplemental to the following Deeds (that is to say) (1) a Mortgage (herein called "the mortgage"), dated the —— day of ——, and made between [*parties*], being a mortgage of the —— Estate in the County of —— for securing £—— and interest; (2) a Transfer of Mortgage (herein

Supplemental to mortgage and transfers.

PRECEDENT XXXI.

TRANSFER WITH COVENANT FOR PAYMENT BY MORTGAGOR.

transferred to and became vested in the transferor. AND WHEREAS the owner, by virtue of the mortgage and of the Law of Property Act, 1925, is now absolutely entitled to the fee simple of the premises comprised in the mortgage (*a*), subject to a mortgage term of 3,000 years from the date thereof without impeachment of waste, and subject also to other mortgage terms created by virtue of other later incumbrances and of the said Act. AND WHEREAS the said sum of £—— is owing to the transferor, on the security of the mortgage, but all interest thereon has been paid down to the date of these presents. AND WHEREAS the transferees have agreed, at the request of the owner, to pay to the transferor the sum of £—— upon having such transfer as is hereinafter contained of the said mortgage debt of £—— and interest and the securities for the same, and upon having the repayment of the same with interest after the rate hereinafter mentioned, further secured in manner hereinafter appearing. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— paid to the transferor by the transferees out of money belonging to them on a joint account at the request of the owner (the receipt whereof the transferor doth hereby acknowledge) :—

—of devolution of equity of redemption;

—that principal sum remains owing, but all interest has been paid;

of agreement for transfer.

Assignment of mortgage debt.

1. The transferor, AS MORTGAGEE, at the request of the owner, Doth hereby assign unto the transferees, ALL THAT the said principal sum of £—— so owing to the transferor on the aforesaid security, and the interest henceforth to become due thereon, AND the full benefit of all powers, remedies, and securities for recovering and compelling payment of or otherwise securing the same, TO HOLD unto the transferees absolutely.

Habendum;

Covenant by owner to pay mortgage debt and interest.

2. The owner Doth hereby covenant with the transferees, and with each of them, that the owner will pay to the transferees on the —— day of —— next the said sum of £——, with interest thereon in the meantime at the rate of —— per cent. per annum, and if the said sum of £——, or any part thereof, shall remain unpaid after that day, will, so long as any part thereof shall

---

called "the first transfer"), dated the —— day of ——, and made between [*parties*], being a transfer of the said mortgage debt and interest, and the securities for the same; (3) a Transfer of Mortgage (herein called "the second transfer"), dated the —— day of ——, and made between [*parties*], being a transfer of the said mortgage debt and interest, and the securities for the same [except certain hereditaments which had been released and disposed of as therein mentioned]"; and continue as above.

(*a*) Add if appropriate "other than and except the said hereditaments which have been released and disposed of as aforesaid."

remain unpaid, pay to the transferees interest on such unpaid sum by equal half-yearly payments on the —— day of —— and the —— day of ——.

PRECEDENT XXXI.

TRANSFER WITH COVENANT FOR PAYMENT BY MORTGAGOR.

3. The transferor, AS MORTGAGEE, at the request of the owner, Doth hereby assign unto the transferees, ALL AND SINGULAR the hereditaments comprised in the mortgage (*b*) [and all other hereditaments (if any) which now, by virtue of any award, inclosure, or otherwise, are vested in the transferor, subject to redemption, by virtue of the mortgage], TO HOLD unto the transferees for the residue of the said term of 3,000 years, SUBJECT to such right of redemption as the said premises are now subject to by virtue of the mortgage and of the Law of Property Act, 1925, or any amending Act. [*Covenant by mortgagor against registration if required, as in Precedent IV.*] IN WITNESS, &c.

Grant.

Habendum; —to transferees;

—subject to equity of redemption.

XXXII.

TRANSFER *of a* MORTGAGE *of* FREEHOLDS *by the* EXECUTORS *of the* MORTGAGEE, *the* EQUITY *of* REDEMPTION NOT *having been* INCUMBERED. *The* MORTGAGOR *receives a* FURTHER ADVANCE (*c*).

PRECEDENT XXXII.

TRANSFER WITH OR WITHOUT FURTHER ADVANCE TO MORTGAGOR. FREEHOLDS.

THIS TRANSFER AND MORTGAGE, made, &c., BETWEEN A., of &c., and B., of, &c. [*executors of mortgagee*] (herein called "the executors"), of the first part, C., of, &c. [*mortgagor*] (herein called "the owner," which expression, where appropriate, includes persons entitled to redeem this security), of the second part, and D., of, &c. [*transferee*] (herein called "the transferee," which expression, where appropriate, includes persons deriving title under him), of the third part. WHEREAS by a Mortgage (herein called "the mortgage") dated, &c. [*before* 1926], and made between the owner, of the one part, and [*original mortgagee*], of the other part, the hereditaments hereinafter described were conveyed to the said [*original mortgagee*] in fee simple, by way of mortgage for securing payment

Recital of mortgage;

(*b*) Add if appropriate "other than and except the said hereditaments which have been released and disposed of as aforesaid, and also (by way of further grant and not of exception)."

It is sometimes convenient to add a schedule of the released hereditaments and to refer to such schedule at this point. But in the present case the last transfer (which would be delivered to the transferees) is supposed to indicate them sufficiently.

(*c*) Compare the preceding Precedent, which, as there noticed, may be used instead of this form, unless the mortgagor receives a further advance.

PRECEDENT XXXII.

TRANSFER WITH OR WITHOUT FURTHER ADVANCE TO MORTGAGOR. FREEHOLDS.

of the sum of £—— with interest as therein mentioned. AND WHEREAS the said [*original mortgagee*] having by his Will, dated the —— day of ——, appointed the executors to be the executors thereof, died on the —— day of ——, and his said Will was proved by the executors in the —— Registry on the —— day of ——. AND WHEREAS by virtue of the mortgage and of the Law of Property Act, 1925, the said hereditaments are now vested in the owner in fee simple subject to the mortgage, which is secured by a term of 3,000 years from the date of the mortgage without impeachment of waste, and which term is now vested in the executors, subject to a provision for cesser corresponding to the right of redemption subsisting with respect to the fee simple. AND WHEREAS the said sum of £—— is now owing to the executors on the said security, but all interest thereon has been paid down to the date of these presents. AND WHEREAS the transferee has agreed, at the request of the owner, to pay to the executors the said sum of £——, and to lend to the owner the further sum of £—— upon having such transfer as is hereinafter contained of the said mortgage debt and interest, and the securities for the same, and upon having the repayment of the said sums of £—— and £—— with interest at the rate of —— per cent. per annum secured in manner hereinafter appearing. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— [*original debt*] paid by the transferee to the executors at the request of the owner (the receipt whereof the executors do hereby acknowledge), and of the sum of £—— [*further advance*] paid by the transferee to the owner (the payment and receipt respectively of which sums of £—— and £——, making together the sum of £——, the owner doth hereby acknowledge) :—

—of Will of mortgagee;

—death and probate;

—that executors are now entitled to mortgage term instead of fee simple;

—that mortgage money is still due;

—of agreement for transfer and further advance.

Transfer of mortgage debt.

1. The executors, AS MORTGAGEES, Do hereby assign unto the transferee, ALL THAT the said sum of £—— [*the original debt*] now owing to the executors on the security aforesaid, and all interest to accrue due in respect thereof, AND the benefit of all securities for the same, TO HOLD unto the transferee absolutely.

Covenant by owner to pay aggregate sum and interest.

2. The owner Doth hereby covenant with the transferee that the owner will pay to the transferee on the —— day of —— next [*six months from date of deed*] the sum of £—— [*aggregate amount of mortgage debt and further advance*], with interest thereon from the date hereof at the rate of —— per cent. per annum, AND if the whole or any part of the said sum of £—— shall remain unpaid after that day, will, so long as the same shall remain unpaid, pay to the transferee interest at the rate aforesaid on such unpaid sum by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

PRECEDENT XXXII.

TRANSFER WITH OR WITHOUT FURTHER ADVANCE TO MORTGAGOR. FREEHOLDS.

3. The executors, AS MORTGAGEES, by the direction of the owner, Do hereby assign, and the owner, AS BENEFICIAL OWNER, Doth hereby assign and confirm, unto the transferee [*parcels*], TO HOLD unto the transferee for the residue of the said term of 3,000 years, DISCHARGED from all right of redemption under the said mortgage, BUT SUBJECT to the proviso for redemption hereinafter contained, AND TO THE INTENT that the said term shall not cease but be kept alive as a security for payment of the said sum of £—— [*aggregate amount*] and interest.

Assignment of land for residue of term.

4. PROVIDED that if the owner shall pay to the transferee on the —— day of —— next the sum of £—— [*aggregate of the said sums of* £—— *and* £——], with interest thereon in the meantime at the rate of —— per cent. per annum, the transferee [*&c. as in Precedent IV., saying* "the term hereby assigned."]. [*Other clauses as required, as in Precedent IV.*] IN WITNESS, &c.

Proviso for redemption.

SCHEDULE—*Description of hereditaments* [*which should follow the description in the mortgage, adding any later description*].

XXXIII.

PRECEDENT XXXIII.

TRANSFER BY INDORSEMENT OF LEASEHOLDS MORTGAGOR BEING A PARTY.

TRANSFER *of a* MORTGAGE *of* LEASEHOLDS *by* INDORSEMENT, *the* MORTGAGOR *being a party.* PART *of the* DEBT *having been* PAID OFF (*d*).

THIS TRANSFER OF MORTGAGE, made the —— day of ——, 19—, BETWEEN the within-named B. [*original mortgagee*] (herein called "the transferor"), of the first part, the within-named A. [*mortgagor*] (herein called "the owner," which expression, where appropriate, includes persons entitled to redeem

(*d*) The leaseholds in the mortgage are here assumed to have been demised for the term except the last day. If the mortgage was by assignment, the first recital would be to the following effect: "WHEREAS by virtue of the within-written mortgage and of the Law of Property Act, 1925, the hereditaments comprised in the within-written mortgage are now vested in the transferor for the residue of the term granted by the within-mentioned lease less the last ten days thereof," and this sub-term will be assigned as in this Precedent, but "except the last ten days thereof," see L. P. Act, 1925, First Schedule, Part VIII, and General Remarks above.

PRECEDENT XXXIII.

TRANSFER BY INDORSEMENT OF LEASEHOLDS MORTGAGOR BEING A PARTY.

this security), of the second part, and C., of, &c. [*transferee*] (herein called "the transferee," which expression, where appropriate, includes persons deriving title under him), of the third part. AND WHEREAS all interest for the within-mentioned sum of £—— has been paid down to the date of these presents, and the sum of £—— has been paid by the owner to the transferor, in part discharge of the said sum of £——, so that £—— only remains owing to the transferor on the security of the within-written mortgage. AND WHEREAS the transferee has, at the request of the owner, agreed to pay to the transferor the sum of £—— [*the reduced debt*], upon having such transfer as is hereinafter contained of the said mortgage debt of £—— remaining owing on the security of the within-written mortgage, and the securities for the same. NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £——, paid at the request of the owner by the transferee to the transferor (the receipt whereof the transferor doth hereby acknowledge) :—

Recital that all interest and part of the principal has been paid.

Of agreement for transfer.

Assignment of mortgage debt.

1. The transferor AS MORTGAGEE Doth hereby assign unto the transferee, ALL THAT the said principal sum of £—— [*the reduced debt*], now remaining owing to the transferor on the security of the within-written mortgage, and the interest henceforth to grow due for the same, and the benefit of all securities for the same, TO HOLD unto the transferee.

Covenant to pay reduced debt and interest.

2. The owner Doth hereby covenant with the transferee [*continue as in Precedent I., substituting* "transferee" *for* "mortgagee," *to pay reduced debt and interest*].

Assignment of leasehold parcels.

3. The transferor AS MORTGAGEE, and at the request of the owner, Doth hereby assign, and the owner, AS BENEFICIAL OWNER, Doth hereby demise and confirm unto the transferee ALL the hereditaments and premises comprised in the within-written mortgage, TO HOLD unto the transferee henceforth for the residue of the within-mentioned term of —— years, except the last day thereof, DISCHARGED from all right or equity of redemption under the within-written mortgage, BUT SUBJECT to the proviso for redemption hereinafter contained. [*Proviso for redemption on payment of reduced debt, as in Precedent IV., substituting* "transferee" *for* "mortgagee," *and* "hereby assigned" *for* "hereby created." *Other clauses as required, see Precedent IV.*] IN WITNESS, &c.

XXXIV.

Surrender *of* Mortgage Terms *in* Freeholds *and* Leaseholds *on* Payment off *of the Mortgage* (*e*).

Precedent XXXIV.

Surrender of Mortgage Terms in Freeholds and Leaseholds.

THIS SURRENDER, made the —— day of ——, 19—, between A., of, &c. (herein called "the mortgagee"), of the one part, and B., of, &c. (herein called "the owner"), of the other part. Whereas by a Mortgage (herein called "the mortgage"), dated, &c. [*after* 1925], and made between the owner of the one part and the mortgagee of the other part, in consideration of the sum of £—— paid by the mortgagee to the owner, the owner demised unto the mortgagee, First, all those freehold hereditaments therein described for a term of 3,000 years from the date thereof, without impeachment of waste; secondly, all those leasehold hereditaments therein described, for the residue of the term of —— years from the —— day of —— granted by a Lease (herein called "the lease"), dated the —— day of ——, and made between C. D. of the one part and the owner of the other part, except the last day thereof, But, as to all the said freehold and leasehold hereditaments subject to redemption on payment of the said sum of £—— and interest as therein mentioned. And whereas the said sum of £—— only is owing to the mortgagee on the security of the mortgage, all interest thereon having been paid down to the date of these presents, and the owner desires to pay off the said sum of £—— upon having such surrender as is hereinafter contained. Now this deed witnesseth that in consideration of the sum of £—— now paid by the owner to the mortgagee (the receipt whereof the mortgagee doth hereby acknowledge), The mortgagee, as mortgagee, doth hereby surrender and release unto the owner, all and singular the hereditaments comprised in and demised by the mortgage, or which are now by any means vested in the mortgagee subject to redemption by virtue of the mortgage, to the intent that the term created by the mortgage in respect of the said freehold hereditaments, may merge in the freehold reversion, and that the subterm created by the mortgage in respect of the said leasehold hereditaments may merge in the leasehold reversion and that the same premises may henceforth be held by the owner discharged from all money secured by and all claims under the mortgage. In witness, &c.

Recital of mortgage;

—of state of mortgage debt;

—of mortgagor's desire to pay it off.

Surrender and release.

Parcels.

Merger of mortgage term.

(*e*) As a receipt which complies with the provisions of sect. 115 of the L. P. Act, 1925 (set out under General Remarks, above), will have the effect of such a surrender as that in the above Precedent, such receipt (of which a form is given in Precedent XXXVIII.) will doubtless supersede a surrender by deed.

XXXV.

PRECEDENT XXXV.

STATUTORY EXAMPLE OF CHARGE BY WAY OF LEGAL MORTGAGE.

Statutory Example of a CHARGE *by way of* LEGAL MORTGAGE (*f*).

THIS LEGAL CHARGE is made, &c., BETWEEN A., of, &c., of the one part, and B., of, &c., of the other part. [*Recite the title of A. to the freeholds or leaseholds in the Schedule and agreement for the loan by B*]. Now in consideration of the sum of £—— now paid by B. to A. (the receipt, &c.), THIS DEED WITNESSETH as follows :—

1. A. hereby covenants with B. to pay [*add the requisite covenant to pay principal and interest*].

2. A., AS BENEFICIAL OWNER hereby charges by way of legal mortgage ALL AND SINGULAR the property mentioned in the Schedule hereto with the payment to B. of the principal money, interest, and other money hereby covenanted to be paid by A.

3. [*Add covenant to insure buildings and any other provisions desired.*] IN WITNESS, &c. [*Add Schedule.*]

Note.—B. will be in the same position as if a mortgage had been effected by a demise of freeholds or a subdemise of leaseholds.

XXXVI.

PRECEDENT XXXVI.

STATUTORY EXAMPLE OF FURTHER CHARGE BY WAY OF LEGAL MORTGAGE.

Statutory Example of a FURTHER CHARGE *by way of* LEGAL MORTGAGE (*g*).

THIS FURTHER CHARGE, made, &c., BETWEEN &c., [*same parties as foregoing legal charge*], supplemental to a Legal Charge (hereinafter called "the Principal Deed"), dated, &c., and made between the same parties as are parties hereto and in the same order for securing the sum of £—— and interest at —— per cent. per annum on [freehold] [leasehold] land at, &c. WITNESSETH as follows :—

(*f*) This is Form No. 1 in the Fifth Schedule to the L. P. Act, 1925, and see sect. 206, sub-sect. (1) (set out under General Remarks, above). The above form and the following form of Further Charge by way of Legal Mortgage, appear to have no special virtue in themselves, but are rather indicatory of the mode of making such Charge or Further Charge. For fuller forms of a Charge of Freeholds, see Precedent I., and of a Charge of Leaseholds, see Precedent II.

(*g*) This is Form No. 2 in the Fifth Schedule to the L. P. Act, 1925, and see note to the last Precedent. The form of a Further Charge to a Charge by way of Legal Mortgage is sufficiently indicated by this statutory example, but may be varied and other clauses added as required. Compare the Form of a Further Charge to a Mortgage by Indorsement given in Precedent XXIV.

PRECEDENT XXXVI.

STATUTORY EXAMPLE OF FURTHER CHARGE BY WAY OF LEGAL MORTGAGE.

1. In consideration of the further sum of £—— now paid to A. by B. [*add receipt and covenant to pay the further advance and interest*].

2. For the consideration aforesaid A., AS BENEFICIAL OWNER, hereby charges by way of legal mortgage the premises comprised in the Principal Deed with the payment to B. of the principal money and interest hereinbefore covenanted to be paid as well as the principal money, interest, and other money secured by the Principal Deed. IN WITNESS, &c.

XXXVII.

Statutory Example of TRANSFER *of* MORTGAGE (*h*).

PRECEDENT XXXVII.

STATUTORY EXAMPLE OF TRANSFER OF MORTGAGE.

THIS TRANSFER OF MORTGAGE, made the —— day of ——, 19—, BETWEEN M., of, &c., of the one part, and T., of, &c., of the other part, supplemental to a Mortgage dated, &c., and made between &c., and to a Further Charge, dated, &c., and made between, &c., affecting, &c. [*here state short particulars of the mortgaged property*]. WITNESSETH that in consideration of the sums of £—— and £—— (for interest), now paid by T. to M., being the respective amounts of the mortgage money and interest owing in respect of the said mortgage and further charge (the receipt of which sums M. hereby acknowledges), M., AS MORTGAGEE, hereby conveys and transfers to T. the benefit of the said mortgage and further charge. IN WITNESS, &c.

(*h*) This is Form No. 1 of the Third Schedule to the L. P. Act, 1925, and see sect. 114 of that Act (set out above under General Remarks). The form is optional only. No statutory example is given of a transfer of an ordinary Charge by way of Legal Mortgage, but the above form may be adapted to the ordinary Charge by way of Legal Mortgage by substituting the words "**Charge by Way of Legal Mortgage**" for "**Mortgage.**" (See and compare the form of Statutory Transfer of a "Statutory" Charge by way of Legal Mortgage in Precedent XL. below).

XXXVIII.

PRECEDENT XXXVIII.

STATUTORY EXAMPLE OF RECEIPT ON DISCHARGE OF A MORTGAGE.

Statutory Example of a RECEPIT *on* DISCHARGE *of a* MORTGAGE (*i*).

I, A.B., of, &c., hereby acknowledge that I have this —— day of ——, 19—, received the sum of £——, representing the [aggregate] [balance remaining owing in respect of the] principal money secured by the within [above] written [annexed] mortgage [and by a Further Charge dated, &c., *or otherwise as required*] together with all interest and costs, the payment having been made by C.D., of, &c., and E.F., of, &c. AS WITNESS, &c.

Note.—If the persons paying are not entitled to the equity of redemption state that they are paying the money out of a fund applicable to the discharge of the mortgage.

XXXIX.

PRECEDENT XXXIX.

STATUTORY CHARGE BY WAY OF LEGAL MORTGAGE.

STATUTORY CHARGE *by way of* LEGAL MORTGAGE (*k*).

THIS LEGAL CHARGE made by way of Statutory Mortgage the —— day of ——, 19—, BETWEEN A., of, &c., of the one part,

(*i*) This is Form No. 2 of the Third Schedule to the L. P. Act, 1925, and see sect. 115 of that Act set out under General Remarks, above. This form appears to be sufficient as a skeleton from which an appropriate form of receipt may be drawn. It would perhaps be sufficient after "**the sum of £——**" to say "**being all money due under and secured by the —— mortgage [and further charge, &c., *as required*] the payment having been made by ——.**" As to the note at the end of the form, see sub-sect. (2) of sect. 115.

(*k*) This is Form No. 1 of the Fourth Schedule to the L. P. Act, 1925, and see sects. 117 to 119 of that Act. This and the three following forms are to be distinguished from the preceding forms which were merely examples given by the Legislature, while these are special statutory forms and "if so made" have special statutory effect and incorporate by implication certain provisions. Thus, in this Statutory Charge there are implied (1) a covenant by the mortgagor to pay principal and interest; (2) a provision that on repayment the mortgagee will discharge the mortgage. The three following Statutory Transfers, if made in the statutory form, will have the effect of vesting in the transferee (i) the right to recover the mortgage debt; (ii) the mortgage term subject to redemption.

PRECEDENT XXXIX.

STATUTORY CHARGE BY WAY OF LEGAL MORTGAGE.

and M., of &c., of the other part : WITNESSETH that in consideration of the sum of £—— now paid to A. by M. of which sum A. hereby acknowledge the receipt. A., AS MORTGAGOR AND AS BENEFICIAL OWNER hereby charges by way of legal mortgage ALL THAT, &c., with the payment to M., on the —— day of ——, 19—, of the principal sum of £—— as the mortgage money with interest thereon at the rate of —— per centum per annum. IN WITNESS, &c.

Note.—Variations in this and the subsequent forms in this Schedule to be made, if required, for leasehold land or for giving effect to special arrangements. M. will be in the same position as if the charge had been effected by a demise of freeholds or a sub-demise of leaseholds.

XL.

STATUTORY TRANSFER, MORTGAGOR NOT JOINING (*l*).

PRECEDENT XL.

STATUTORY TRANSFER MORTGAGOR NOT JOINING.

THIS TRANSFER OF MORTGAGE made by way of statutory transfer the —— day of ——, 19—, BETWEEN M., of, &c., of the one part, and T., of, &c., of the other part supplemental to a legal charge made by way of statutory mortgage dated, &c., and made, &c. WITNESSETH that in consideration of the sum of £—— now paid to M. by T. (being the aggregate amount of £—— mortgage money and £—— interest due in respect of the said legal charge of which sum M. hereby acknowledges the receipt). M., AS MORTGAGEE, hereby conveys and transfers to T. the benefit of the said legal charge. IN WITNESS, &c.

Note.—This and the next two forms also apply to a transfer of a statutory mortgage made before the commencement of this Act, which will then be referred to as a mortgage instead of a legal charge.

(*l*) This is Form No. 2 of the Fourth Schedule to the L. P. Act, 1925, and see note to last Precedent. The reference in the note at the end of this form is to the form of Statutory Mortgage in Part I. of the Third Schedule to the C. Act, 1881, and see sect. 26 of that Act.

XLI.

PRECEDENT XLI.

STATUTORY TRANSFER, A COVENANTOR JOINING.

STATUTORY TRANSFER, A COVENANTOR JOINING (*m*).

THIS TRANSFER OF MORTGAGE made by way of statutory transfer the —— day of ——, 19—, BETWEEN A., of, &c., of the first part, B., of, &c., of the second part, and C., of, &c., of the third part; supplemental to a legal charge made by way of statutory mortgage dated, &c., and made, &c. WITNESSETH that in consideration of the sum of £—— now paid by A. to C. (being the mortgage money due in respect of the said legal charge, no interest being now due or payable thereon, of which sum A. hereby acknowledges the receipt), A., AS MORTGAGEE, with the concurrence of B., who joins herein as covenantor hereby conveys and transfers to C. the benefit of the said legal charge. IN WITNESS, &c.

XLII.

PRECEDENT XLII.

STATUTORY TRANSFER AND MORTGAGE.

STATUTORY TRANSFER *and* MORTGAGE COMBINED (*n*).

THIS TRANSFER AND LEGAL CHARGE is made by way of statutory transfer and mortgage the —— day of ——, 19—, BETWEEN A., of, &c., of the first part, B., of, &c., of the second part, and C., of, &c., of the third part; supplemental to a legal charge made by way of statutory mortgage dated, &c., and made, &c. WHEREAS a principal sum of £—— only remains due in

(*m*) This is Form No. 3 of the Fourth Schedule to the L. P. Act, 1925, and see notes to last two Precedents. A. is presumably the mortgagee, who is being paid by C., the transferee. The words "paid by A. to C." should therefore read "paid to A. by C.," or "paid by C. to A." See also sect. 118 (3), whereby a covenant by the joining covenantor is implied to the effect that he will pay the principal and interest to the transferee.

(*n*) This is Form No. 4 of the Fourth Schedule to the L. P. Act, 1925, and *see* the notes to Form No. 1 (Statutory Charge) and to Form No. 2 (Statutory Transfer) above. This form will operate as a Statutory Mortgage as well as a Statutory Transfer (see sect. 118, sub-sect. (4)).

respect of the said legal charge as the mortgage money, and no interest is now due thereon, AND WHEREAS B. is seised in fee simple of the land comprised in the said legal charge subject to that charge. NOW THIS DEED WITNESSETH as follows :—

1. In consideration of the sum of £—— now paid to A. by C. (the receipt and payment of which sum A. and B. hereby respectively acknowledge)* A., AS MORTGAGEE, hereby conveys and transfers to C. the benefit of the said legal charge.

2. For the consideration aforesaid B† AS BENEFICIAL OWNER hereby charges by way of legal mortgage ALL the premises comprised in the said legal charge with the payment to C. on the —— day of ——, 19—, of‡ the sum of £—— as the mortgage money with interest thereon at the rate of —— per centum per annum. IN WITNESS, &c. [*or in the case of a further advance, after* "acknowledge" *at* * *insert* "and of the further sum of £—— now paid by C. to B., of which sum B. hereby acknowledges the receipt"; *also at* † *before* "as beneficial owner" *insert* "as mortgagor and" *as well as where B. is not the original mortgagor. And after* "of" *at* ‡ *insert* "the sums of £—— and £—— making together"].

Note.—Variations to be made, as required, in case of the deed being by indorsement, or in respect of any other thing.

XLIII.

PRECEDENT XLIII.

RECEIPT ON DISCHARGE OF STATUTORY LEGAL CHARGE OR MORTGAGE.

RECEIPT *on* DISCHARGE *of* STATUTORY LEGAL CHARGE *or* MORTGAGE (*o*).

I., A.B., of, &c., hereby acknowledge that I have this —— day of ——, 19—, received the sum of £——, representing the [aggregate] [balance remaining owing in respect of the] mortgage money secured by the [annexed] within [above] written statutory legal charge [*or* statutory mortgage] [and by the further statutory charge dated, &c., *or otherwise as required*] together with all interest and costs the payment having been made by C.D., of, &c., and E.F., of, &c. AS WITNESS, &c.

Note.—If the persons paying are not entitled to the equity of redemption state that they are paying the money out of a fund applicable to the discharge of the statutory legal charge or mortgage.

(*o*) This is Form No. 5 of the Fourth Schedule to the L. P. Act, 1925, and see sect. 120 of that Act. Compare this form with Form No. 2 of the Third Schedule (Precedent XXXVIII.), and see the note thereto.

13 JAN. 1926